TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]233

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66, ET AL., APPELLANTS,

vs.

HERKERT & MEISEL TRUNK COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED FEBRUARY 27, 1923.

(29,428)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

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vs.

HERKERT & MEISEL TRUNK COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 17, 1923.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1922, of said Court, before the Honorable Walter H. Sanborn and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Thomas C. Munger, District Judge.

Attest:
(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the 2nd day of June, A. D. 1921, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United Leather Workers International Union, et al., were Appellants, vs. Herkert & Meisel Trunk Company, a corporation, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

Be it Remembered, That heretofore, to-wit, on the 24th day of May, 1921, there was filed in the office of the Clerk of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, in cause No. 5353, wherein Herkert & Meisel Trunk Company, a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Company, a corporation, Stability Leather Goods Manufacturing Company, a corporation, and H. A. Kolb Trunk & Case Company, a corporation, are complainants, and United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Shnitz, Gus Nenninger, and George Wenk, are defendants, a Praecipe for Transcript, which said Praecipe for transcript and the matters and things called for therein are in words and figures, as follows, to-wit:

2 (Bill of Complaint.)

To the Honorable, the Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:—

Complainants, Herkert & Meisel Trunk Co., a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Co., a corporation, Stability Leather Goods Manufacturing Co., a corporation, H. A. Kolb Trunk & Case Co., a corporation, state that they are each a corporation

duly organized and existing under the laws of the State of Missouri and each a citizen of said state of Missouri and that each of said companies has its principal offices and places of business in the City of St. Louis and the District aforesaid.

That each of said complainants is engaged in the business of manufacturing trunks, leather goods and leather bags in the City of St. Louis, Missouri and that each of said complainants has been so engaged for a number of years and each has built up a very large and valuable maufacturing business and each complainant is engaged in the shipment of the product of its factories in Interstate Commerce. That each of said companies has a large number of customers in various states and territories of the United States to which it has been shipping, and will continue to ship, in Interstate Commerce trunks, leather goods and leather bags manufactured in the various factories of complainants. That the complainants and each of them is receiving and will continue to receive orders to ship goods in Interstate Commerce as aforesaid, all of which goods said complainants and each of them desires to ship in acordance with its already accepted orders; that its customers are demanding shipment of said goods and will cancel their orders unless shipped promptly.

3 Complainants further state that they and each of them is receiving and will receive large quantities of raw materials in Interstate and Foreign Commerce from which the said trunks, leather goods and leather bags are manufactured and that complainants and each of them maintain a shipping department at their various places of business in the City of St. Louis to handle the Interstate Commerce business of complainants and each of them.

Complainants further state that in operating their said factories they employ a large number of persons, both men and girls, and many of them are timid and young and easily frightened and many of said employees were anxious to continue in the service of said respective complainants and complainants were entitled to receive the services of said employees.

Complainants further states that the factories of the said Herkert and Meisel Trunk Co., are located at 13th and Chestunt Streets, 15th and Pine Streets and 910 Washington Avenue, in the City of St. Louis; the factory of complainant, B. C. Murphy Trunk Co., is located at 13th and Papin Streets, in the City of St. Louis; that the factory of complainant, James A. Quirk Trunk Co., are located at 1228

Olive Street and 915 Wash Street, in the City of St. Louis; that the factory of complainant, Stability Leather Goods Manufacturing Co., is located at 918 South 4th St., in the City of St. Louis; and that the factory of complainant, H. A. Kolb Trunk & Case Co., is located at 1224 Olive Street, in the City of St. Louis, and that each of said complainants operate stores in connection with their said factories. That said factories maintain splendid sanitary conditions and excellent working conditions for their employees and that they are well equipped for the comfort and care of the workers in said factories and that the scale of wages, hours of labor and conditions under which the employees of each of complainants are required to work are good.

4 Complainants further state that the amount involved as to each of them and in controversy in this cause by far exceeds the sum of Three Thousand Dollars ($3,000.00) exclusive of interest and costs and that the value of the property rights of said complainants herein sought to be protected exceeds the sum of One Million Dollars ($1,000,000.00).

Complainants further state that the said defendants United Leather Workers International Union, Local Lodge or Union No. 66, is a voluntary and unincorporated association and has its office at No. 1007 Chestnut Street, in the City of St. Louis, Missouri, that it is composed of numerous persons all of whom reside in the City of St. Louis, State of Missouri. That the defendant, A. M. Reuter, is the President of the United Leather Workers International Union, Local Lodge or Union No. 66, that Al. Birkenmeier is its Business Agent, that H. Ehlenbeck is Chairman of the Executive Committee of Said Union and that Charles Kaysing, John Smith, Michael Little, John Leehner are members of the Executive Committee of said Union; that the defendant, Edward Schilling is a resident of Kansas City in the State of Missouri and engaged with the other defendants herein in conducting a strike and boycott against complainants and each of them; that the Defendant, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J Perry, John Remstedt, Chas. Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Chas. Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Menninger, George Wenk, are members,

agents and representatives of said Union and sufficiently represented and control the same to bring the said Union and all the members thereof before the Court for the adjudication of this cause. And complainants state that the membership of said United Leather Workers International Union, Local
5 Lodge or Union No. 66 includes many persons whose names are unknown to complainants and for that reason cannot be stated.

Complainants further state that on the 28th day of February, 1920, and thereafter the said defendants well knowing the facts herein above stated illegally determined that each of the said complainants should on the first day of April, 1920, enter into a contract with said Local Union by which each of said complainants would unionize its said business and adopt what is commonly called a "closed shop" policy by which is meant that said complainants would not permit to work in their factories as trunk makers any persons who are not members in good standing, of said Local Union, and if complainants refused to accept said demands, to ruin said Interstate Commerce business of each of them.

Complainants further state that on the 10th day of April, 1920, the defendants, acting individually and for and on behalf of said Union, unlawfully, wrongfully and intentionally conspired with each other and with various other persons to the complainants unknown, to injure and destroy the business of complainants and to prevent the employees of complainants from continuing their said employment unless the said complainants and each of them would yield to defendants' demands as aforesaid and the said complainants further state that the said defendants have sought and endeavored to induce, force and compell, and did induce, force and compel the employees of the said complainants to stop working for said complainants and that the said defendants in pursuance of said conspiracy have inaugurated a strike against complainants and each of them, and that the said defendants in further pursuance of said unlawful conspiracy have assaulted, threatened and abused complainants' employees and by following the said employees to and from their homes and by the use of abusive language and boisterous conduct have so intimidated the said employees as to force them to quit complainant's employment, against their wills,
6 and have thereby prevented complainants from engaging in and carrying on their said Interstate Commerce business and interfered with and obstructed said complainants in the manufacture and shipment of the products

of their various factories sold to be shipped in Interstate commerce.

Complainants further state that the said defendants, their associates and confederates, aides, abettors and sympathizers, pursuant to said unlawful conspiracy and with intent to injure and ruin the business of complainants and each of them and interfere with the Interstate Shipments of said complainants, have declared a boycott against said complainants and are prosecuting the same by the aforesaid unlawful methods.

Complainants further state that in pursuance of said unlawful conspiracy the said defendants, their agents, associates and confederates have since the inauguration of said boycott kept continually in front of, around and adjacent to the places of business of said complainants a large number of men who by force of numbers, menaces and threats have so intimidated the employees and persons seeking to become employees of said complainants as to prevent them from entering the places of business of the said complainants; all for the purpose of destroying the said Interstate Commerce business of complainants and to prevent complainants from carrying out their contracts with their various customers, unless they acquiesced in the demands of the defendants. That the defendants are still continuing the mass picketing for the purpose aforesaid and will continue so to do unless enjoined and restrained as hereinafter prayed. That all of said methods were and are employed by the defendants for the purpose of injuring and destroying the business of complainants unless said complainants yield to said demands; That by said methods they have prevented and will continue to prevent persons seeking to get employment with the
7 said complainants from engaging in such employment;
That the said defendants, their associates and confederates, pursuant to their said conspiracy have threatened and are still continuing to threaten to assault and wound said employees unless they quit their said employment; That they by their said conspiracy and by their said conduct caused, induced and coerced a large number of the employees of complainants, against their will, to quit complainant's employment and are continuing to use the said methods for the purpose of forcing and coercing more employees to quit their said employment against their wills; That a large number of said employees who have been so forced out of their positions by such illegal methods will return to work just as soon as they can get protection; That the said defendants pursuant

to the unlawful conspiracy as aforesaid have by their unlawful conduct and methods prevented a large number of said employees from engaging in complainants' service and have succeeded in so terrifying many of said employees that they are afraid to return to work, although anxious to do so.

Complainants further state that the said defendants, their agents, associates and confederates, well knew at the time of entering into said unlawful conspiracy, and well knew that said complainants and each of them were engaged in Interstate Commerce and receiving and will continue to receive in the ordinary course of their business, and were shipping and will continue to ship large quantities of goods in Interstate Commerce. And that said defendants by their unlawful acts as aforesaid have maliciously obstructed and prevented the said complainants from procuring the necessary help to receive and ship goods in Interstate Commerce as aforesaid. And said defendants have declared that they will continue to do so unless the said complainants accept the said demands of defendants.

8 Complainants further state that the said conspiracy of the said defendants, their agents, associates and confederates, is in restraint of Interstate Commerce and in violation of the expressed provisions both of the Sherman Anti-Trust Law, approved July 2nd, 1890, and of the Clayton Act, approved October 15th, 1914, which is supplemental to the said Sherman Act, and an amendment thereof, and that by said methods they are endeavoring to destroy the Interstate and Foreign business of the said complainants and each of them. And that they have inflicted and will continue to inflict upon the said complainants and each of them in so doing, large continuing and irreparable damages unless enjoined and restrained as hereinafter prayed, and all in direct violation of the said acts.

Complainants further state that the defendants, their agents, associates and confederates, pursuant to said unlawful conspiracy and by the acts done pursuant thereto, which are still continuing, are interfering with the said Interstate Commerce business of said complainants and each of them and the orderly conduct thereof, contrary to the provisions of the Interstate Commerce Act and of the Act of Congress approved August 10, 1917, amending the same, and that the said defendants their agents, associates and confederates, pursuant to said conspiracy, are now endeavoring and will continue to endeavor to destroy the said Interstate Com-

merce business of said complainants, and each of them, unless enjoined and restrained as hereinafter prayed.

Complainants further state that by Article 1, Section 3, Clause 3, of the Constitution of the United States providing:

"The Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes," and the Acts of Congress passed pursuant thereto complainants and each of them have the absolute constitutional right to engage in Interstate Commerce; that they have so engaged as hereinbefore set out; That the
9 said defendants, their agents, associates and confederates, have by their said illegal conspiracy undertaken and are still undertaking to prevent the said complainants from the exercise of their said respective rights to engage in Interstate Commerce and in effect to deny to said complainants such rights.

Complainants further state that they and each of them are entitled to an accounting against the said defendants, their agents, associates and confederates and a judgment against them and each of them, upon such accounting for any damages inflicted upon said complainants and each of them by said unlawful conspiracy and the said acts done thereunder and pursuant thereto as provided by the said Sherman and Clayton acts.

Complainants further state that the said defendants and such other persons acting for them as aforesaid are either insolvent or of small means, and that complainants have no recourse or adequate remedy at law against them, and that if said defendants be not restrained and enjoined from continuing their acts, conduct and conspiracy as aforesaid they will destroy complainant's business and destroy complainant's property and the value thereof.

Complainants further state that they represent almost the entire business of manufacturing trunks and leather bags in the City of St. Louis and that [thie] result has been obtained by great labor and effort on the part of complainants and at great expense and that it is absolutely impossible for said complainants to carry on their said business if they are hindered by the closed shop policy for the reason that its output would be restricted if subject to unreasonable union

domination and it would be absolutely destructive of the business of complainants.

10 Complainants further state and aver that the said defendants, their agents, associates, abettors, sympathizers and aiders, are endeavoring to monopolize labor and have combined and conspired as aforesaid to monopolize labor in preparing goods in complainants' said line of manufacture in Interstate Commerce contrary to the expressed terms of the Sherman and Clayton Acts, and will continue to do so in direct violation of the provision of said Acts unless enjoined and restrained as hereafter prayed.

Complainants further state that the issues herein between each of said complainants and the said defendants are exactly the same, and that all of the said complainants are suffering from the said illegal conspiracy of the said defendants conceived and executed at the same time against all the said complainants; That said defendants, their agents, and abettors, are conducting said strike against said complainants and each of them by a General Strike Committee, representing the said defendants and that the head of the General Strike Committee is the said Edward Schilling, imported from Kansas City for the purpose.

Complainants further state that by reason of the fact that said defendants herein are the same as to each of said complainants, that the issues herein are the same as to each of said complainants, and each of them are the victims of the same conspiracy hereinbefore alleged, said complainants are entitled to join in this suit and are entitled to joint relief against the said defendants, their agents, associates and confederates.

Complainants further state that by such joinder a multiplicity of actions will be avoided and unnecessary cost bills and expense will be avoided. And said parties will be benefitted by one proceeding; That the said joinder herein of the said complainants in this case is expressly permitted by the Federal Statutes, Practice and Equity rules.

11 Wherefore, the complainants pray that a temporary restraining order be granted forthwith without notice, restraining and enjoining the said defendants and each of them, both individually and as officers and agents of the said Union, and restraining and enjoining all the members thereof, and any and all other persons in concert with them and in connection with them and their agents, representatives,

associates, abettors, sympathizers and aiders, from congregating and loitering about and around the factories of and places of business of complainants and from picketing same, from using violent, threatening and abusive language towards the officers, agents and employees of said complainants or those doing business with them; from assaulting, laying hands on or following said agents and employees, from inducing or procuring other persons to congregate or loiter at or around the premises, factories or places of business of said complainants, or to in any manner interfere with the employees of complainants or those seeking to become employees of complainants; from visiting the factories or places of business of complainants for the purpose of threatening or intimidating the employees of complainants, from following the employees of complainants when going to and from the factories or places of business of complainants, from interfering in any manner with the delivery or shipment of goods to or from the factories or places of business of complainants. From compelling or inducing or attempting to compel or induce by use of threats or deception or violence any person not to enter the employ of said complainants if desirous of doing so. And from doing any act or thing whatsoever, by any of the above named means or methods in furtherance of a purpose to impede complainants' business or to impede any of its officers and employees in the free and unhindered conduct of complainants' business. And to abstrain from congregating at or near the premises, factories or places of business of said complainants with the purpose and in such a manner as to intimidate or obstruct,
12 surround or impede any of the employees of said complainants or persons seeking employment with them, And from intimidating, [onstructing] or impeding persons seeking employment with complainants in going to, remaining at or going from the premises of said complainants. From either singly or in combination with others picketing or obstructing impeding or besetting the streets, alleys and approaches of the premises of said complainants with the purpose and in such a manner as to intimidate, threaten, impede, [onstruct], surround or coerce any of the employees of said complainants or persons seeking employment of said complainants. And from interfering with such persons anywhere because of said persons being in the employment of complainants or of their seeking to be employed by them; From going either singly or collectively to the homes or places of habitation of employees or those seeking employment with said complainants with the purpose of intimidat-

ing or coercing any or all of them to leave the employment of the said complainants or from entering their employment.

Complainant further prays that there may be an accounting herein against said defendants, their agents, associates and confederates and each of them to ascertain the said damages inflicted upon the said complainants and each of them and that judgment be entered herein in favor of said complainants and each of them, for the amount ascertained to be due from said defendants, their agents, associates, and confederates in accordance with the provisions of the said Sherman and Clayton Acts.

Complainants further pray for such other and further relief as the Court may deem right and proper in the premises. Complainants further pray that upon final hearing herein a permanent injunction may be granted by said Court against the said defendants, their agents, associates and confederates, aiders, abettors and sympathizers in the foregoing matter, enjoining and restraining each and all of them from
13 any and all of the unlawful acts specified herein.

Complainants further pray that a writ of subpoena issue herein requiring the defendants to appear and answer this petition, but not under oath (answer under oath being hereby expressly waived) and that the said defendants be duly notified to appear at an early convenient date and show cause, if any they have, why a temporary injunction should not be granted herein as hereinbefore prayed for.

(Signed) MATT J. HOLLAND,
Solicitor for Complainants.

State of Missouri,
City of St. Louis—ss.

Before me, the undersigned, a Notary Public, within and for the City of St. Louis and State aforesaid, personally came John A. Meisel to me personally known, who being on his oath duly sworn, says that he is the President of Herkert & Meisel Trunk Co., and that he has been duly authorized by it, for it and in its behalf to make this affidavit. That he has read the foregoing and above complaint and knows the contents thereof and that the facts set forth are true according to his best knowledge and belief.

(Signed) JOHN A. MEISEL.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires: Dec. 1st, 1923.

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14 State of Missouri,
City of St. Louis—ss.

Before me, the undersigned, a Notary Public, within and for the City of St. Louis, and State aforesaid, personally came F. Leo Murphy, to me personally known, who being on his oath duly sworn, says that he is the Sec. and Mngr. of P. C. Murphy Trunk Co., and that he has been duly authorized by it, for it and in its behalf to make this affidavit. That he has read the foregoing and above complaint and knows the contents thereof and that the facts set forth are true according to his best knowledge and belief.

(Signed) F. LEO MURPHY,

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) F. LEO MURPHY,
Notary Public.

My commission expires Dec. 1st 1923.

State of Missouri,
City of St. Louis—ss.

Before me, the undersigned, a Notary Public, within and for the City of St. Louis, and State aforesaid, personally came H. A. Kolb to me personally known, who being on his oath duly sworn, says that he is the President of H. A. Kolb Trunk & Case Co. and that he has been duly authorized by it, for it and in its behalf, to make this affidavit. That he has read the foregoing and above complaint and knows the contents thereof and that the facts set forth are true according to his best knoweldge and belief.

(Signed) H. A. KOLB.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

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15 State of Missouri,
City of St. Louis—ss.

Before me, the undersigned, a Notary Public within and for the City of St. Louis and State aforesaid, personally came H. M. Wilson to me personally known, who being on his oath duly sworn, says that he is the President of the Stability Leather Goods Mfg. Co. and that he has been duly authorized by it, for it and in its behalf to make this affidavit. That he has read the foregoing and above complaint and knows the contents thereof and that the facts set forth are true according to his best knowledge and belief.

(Signed) H. M. WILSON.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

State of Missouri,
City of St. Louis—ss.

Before me, the undersigned, a Notary Public within and for the City of St. Louis and State aforesaid, personally came, Thos. A. Quirk, to me personally known, who being on his oath duly sworn, says that he is the President of the Jas. A. Quirk Trunk Co. and that he has been duly authorized by it, for it and in its behalf to make this affidavit. That he has read the foregoing and above complaint and knows the contents thereof and that the facts set forth are true according to his best knowledge and belief.

(Signed) THOS. A. QUIRK.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

(Endorsed: "Filed May 7 1920 W. W. Nall, Clerk.")

16 (Affidavits in Support of Bill of Complaint.)

(Affidavit of Robert F. Weber.)

State of Missouri,
City of St. Louis—ss.

ROBERT F. WEBER, of lawful age, being on his oath duly sworn states that he is foreman at the Herkert and Meisel Trunk Co., at their factory at 15th and Pine Streets, in the City of St. Louis; That a strike was inaugurated against said company on or about April 10th, 1920, and that since that time at various intervals a large number of men have congregated in, around and adacent to the factory and place of business of the said Herkert and Meisel Trunk Co., at 15th and Pine Streets, as aforesaid, and by threats, grimaces, force of numbers, and intimidation, have endeavored to frighten and intimidate the employees and would-be employees of the said company.

Affiant further states that he has heard one of said pickets, a man named Herman Dieckhoerner, make threats of personal violence against one of the workers at said factory.

Affiant further states that the attitude of the strikers who are picketing the factory as aforesaid has resulted in tying up said factory and the said company has been unable to fill its orders which it has on file in Interstate Commerce.

(Signed) ROBERT F. WEBER.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

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17 (Affidavit of Olive Rubie.)

State of Missouri,
City of St. Louis—ss.

OLIVE RUBIE, of lawful age, being on her oath duly sworn, states that she is employed at the Herkert & Meisel Trunk Company's factory at 13th and Chestnut Sts., in the City of St. Louis, Mo. That several persons, former employees of said Trunk factory have inaugurated a strike and boycott against said company.

Affiant further states that she has no fault to find and is perfectly satisfied with the hours of labor, scale of wages and conditions under which she is required to work. That commencing about the 24th of April, 1920, she has been frequently assaulted and called violent and indecent names by a numebr of persons whose names are to her unknown, and who are doing picket duty in front, around and adjacent to the factory of the said Herkert and Meisel factory at 13th and Chestnut Streets.

Affiant further states that by reason of the conduct and violent language of the said pickets she is, and has been put in great fear of personal injury and is afraid to continue her employment. That she has been assaulted several times during the past week going to and from her work at said factory by the said pickets.

(Signed) OLIVE RUBIE.

Sworn and subscribed to before me on this, the 30th day of April, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

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18 (Affidavit of Dewnis Chocolas.)

State of Missouri,
City of St. Louis—ss.

DEWNIS CHOCOLAH, of lawful age, being on his oath duly sworn states that he is employed at the factory of the Herkert and Meisel Trunk Company at 13th and Chestnut Streets, St. Louis, Mo.

That he is perfectly satisfied with the scale of wages, hours of labor and conditions under which he is required to work. That for several weeks past a large body of men on a strike who have inaugurated a boycott against the said Herkert and Meisel Trunk Company have been picketing said factory in large numbers and by threats and intimidation have attempted to prevent and persuade affiant and his fellow workers to quit work in said factory.

Affiant further states that a large number of men continuously picket said factory walking up and down, around and in front of and adjacent to said factory and by reason of the large number of persons on said picket line and the threats and menaces directed by them against affiant, affiant

states that he is in great fear of bodily injury at their hands and is afraid to continue in the employ of the said Herkert & Meisel Trunk Company.

(Signed) DEWNIS CHOCOLAS.

Sworn and subscribed to before me on this, the 30th day of April, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

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19 (Affidavit of Charles Dykeman.)

State of Missouri.
City of St. Louis—ss.

CHARLES DYKEMAN, of lawful age, being on his oath duly sworn states that he is employed by the Herkert & Meisel Trunk Company's factory at 13th and Chestnut Streets in the City of St. Louis.

That he has no complaint to make and is perfectly satisfied with the schedule of wages paid him, the hours of labor and conditions under which he is required to work.

Affiant further states that a number of former employees of said company have inaugurated a strike and boycott against said company and every day during the hours of business a large number of former employees who are on a strike and who are picketing said factory stand around and adjacent to the factory and place of business of the said Herkert & Meisel Trunk Company at 13th and Chestnut Streets and by threats and intimidation have endeavored to prevent affiant from going to work at said place of business.

Affiant further states that on the 28th and 29th and 30th of April he has been accosted by a large number of men in front of said factory on his way to work and warned and threatened to keep away from said factory and not to return to work there again.

Affiant further states that by reason of the conduct and violent attitude of the said strikers he has been put in great fear of bodily harm and is afraid to continue in the service of the said Herkert & Meisel Trunk Co.

(Signed) CHARLES DYKEMAN.

Subscribed and sworn to before me on this, the 30th day of April, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

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20 (Affidavit of Frank Mees.)

State of Missouri.
City of St. Louis—ss.

FRANK MEES, of lawful age, being on his oath duly sworn, states that he is Superintendent of the Trunk Factory of the Herkert and Meisel Trunk Company, at 13th and Chestnut Streets, St. Louis, and that he knows of his own knowledge, that a large number of orders are now on file at the office of said Company for shipment in Interstate Commerce to the various states of the United States. That the Company is engaged in Interstate Commerce and that it is necessary for it to buy large supplies outside of St. Louis for shipment from other cities to its factory in St. Louis.

That on or about the 10th day of April, 1920, a large number of former employees walked out of said factory and inaugurated what is known as a strike and since that date have continuously and persistently boycotted said factory and in pursuance of said boycott have stood around, about and adacent to said factory in large numbers and have carried on what is known as mass picketing and have prevented the said Herkert and Meisel Trunk Company from carrying on its business.

Affiant further states that the said Herkert and Meisel Trunk Company has had to practically suspend business since the inauguration of said strike and boycott and said company is unable to fill its orders which it has on file for shipment in Interstate Commerce by reason of said boycott.

Affiant further states that the loyal employees of said company inform him that they have been intimidated and assaulted by men and women doing picket duty in front of said factory and that they are in fear of great bodily harm at the hands of said pickets if they continue in the employ of the said Herkert and Meisel Trunk Co.

(Signed) FRANK MEES.

21 Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires Dec. 1st 1923.

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22 (Affidavit of Fred Sherman.)

State of Missouri.
City of St. Louis—ss.

FRED SHERMAN, of lawful age, being on his oath duly sworn states that he is employed as Foreman in the Trunk Department of the Herkert and Meisel Trunk Company at 13th and Chestnut Streets.

That for several weeks past a large number of men have been boycotting the factory and place of business of said Herkert & Meisel Trunk Company. That by reason of the attitude of the large number of pickets that stand around and adjacent to the factory and place of business of said company the business of the said company has had to be practically suspended, the employees and prospective employees of said company being afraid to enter the employ of the said Herkert & Meisel Trunk Company.

(Signed) F. C. SHERMANN.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,

My term expires December 1st, 1923.

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23 (Affidavit of Alexander Dodd.)

State of Missouri.
City of St. Louis—ss.

ALEXANDER DODD, of lawful age, being duly sworn on his oath states that he is employed as a salesman by the Herkert & Meisel Trunk Company. That he has had occasion to visit the factory several times during the past week and that he has noticed a large number of men and women doing mass picketing around, about and adjacent to said factory and place of business.

That he has heard said pickets use violent and indecent language in and around said factory. That he knows of his own knowledge that the Herkert & Meisel Trunk Company has been unable to carry on business for several weeks past at said factory by reason of the belligerent attitude and threats and mass picketing and violent conduct of the pickets who continually patrol in front of and around said factory at all hours of the day while employees are going to and coming from work.

(Signed) ALEXANDER DODD.

Sworn and subscribed to before me this, the 6th day of May, 1920.

(Seal) (Signed) MARIE WALTON,
Notary Public.

My commission expires December 1st, 1923.

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24 (Affidavit of William Priesmeyer.)

State of Missouri.
City of St. Louis—ss.

WILLIAM PRIESMEYER, of lawful age, being on his oath duly sworn states that he is employed as Assistant Foreman of the Trunk Department of the Herkert and Meisel Trunk Co., and has been in the employ of the said firm for a large number of years.

That for several weeks past a large number of men have been boycotting the factory and place of business of said Herkert and Meisel Trunk Co. That by reason of the attitude of the large number of pickets that stand around and adjacent to the factory and place of business of said company, the business of the said company has had to be practically suspended, the employees and prospective employees of said company being afraid to enter the employ of the said Herkert and Meisel Trunk Company.

(Signed) WM. H. PRIESMEYER.

Sworn and subscribed to before me on this, the 6th day of May, A. D. 1920.

(Seal) (Signed) MARIE WALTON,

My term expires Dec. 1st, 1923.

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25 (Affidavit of James J. Maruska.)

State of Missouri,
City of St. Louis—ss.

JAMES J. MARUSKA, of lawful age, being duly sworn, upon his oath states that he is now and has been for the past 61 years a resident of the City of St. Louis, Missouri, and now resides at 4418 Louisiana Avenue, St. Louis, Mo.

That during all the times hereinafter mentioned, affiant was employed as a Department Foreman by the P. C. Murphy Trunk Company, 13th and Papin Streets, St. Louis, Missouri. That on or about April 23, 1920, at about 7:30 A. M., while affiant was standing on the porch entrance to the office of P. C. Murphy Trunk Company, southwest corner of 13th and Papin Streets, St. Louis, Mo. in company with the night watchman, when one L. Berg who was formerly employed by said Murphy Trunk Company, passed along the sidewalk, close to affiant, and within five feet of him, and in a loud and commanding voice called to affiant: "You better get out there, you old scab", and then passed along the street. Said Berg was alone at the time said remark was made, and later Berg joined several other men standing on the northwest corner of 13th and Papin Streets.

Dated, at the City of St. Louis, Missouri, this the 30th day of April, 1920.

(Signed) JAMES J. MARUSKA.

Subscribed and sworn to before me, this the 30th day of April, 1920.

(Signed) GEORGE J. HEIECK,
(Notary Seal) Notary Public, City of St. Louis.

My term expires August 1, 1923.

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26 (Affidavit of Joseph Russell.)

State of Missouri,
City of St. Louis—ss.

JOS. RUSSELL, of lawful age, being duly sworn, upon his oath states that he is now and has been for the past forty years a resident of the city of St. Louis, Missouri, and now resides at 1239 S. 3rd Street, St. Louis, Mo.

That during all the times hereinafter mentioned, he was employed by the P. C. Murphy Trunk Company in the capac-

ity of a packer and shipper, at the factory at 13th and Papin Streets, St. Louis, Missouri.

That on or about April 26, 1920, at about 4.30 P. M. as affiant was in the act of walking home after working hours, from said Murphy Trunk Company, and had reached Chouteau Avenue, just east of 12th Street, in said city of St. Louis, Mo., one John Stenson, who was formerly employed by said Murphy Trunk Company, and who was standing at said northeast corner of 12th and Chouteau Avenue, stopped affiant and pointed his finger at him, and in a loud and boisterous voice called at affiant, "You scab bastard", and then crossed over behind affiant and followed him for several steps, and further threatened "I will be down at your house". That said Stenson is a man of powerful built, of about 35 years of age, and by such threats and acts embarrassed and harrassed affiant, and endangered his welfare and peace, and made him very nervous. Stenson then proceeded to return to said corner, and affiant resumed his way to his home.

Dated, at the city of St. Louis, Missouri, this the 30th day of April, 1920.

(Signed) JOSEPH RUSSELL

Subscribed and sworn to before me, this 30th day of April, 1920.

My term expires August 1, 1923.

(Signed) GEORGE J. HEIECK
(Notary Seal) Notary Public, City of St. Louis, Mo.

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27 (Affidavit of H. M. Wilson.)

State of Missouri,
City of St. Louis—ss.

H. M. Wilson, of lawful age, being on his oath duly sworn states that he is the President of the Stability Leather Goods Manufacturing Co., and that the office and place of business of said company is situated at 918 South 4th Street, in the City of St. Louis, Mo. That said company is capitalized for Twenty Thousand Dollars ($20,000.00) and is a corporation duly organized and doing business under the laws of the State of Missouri.

Affiant further states that said company is engaged in Interstate Commerce and sells the production of its factory

in the various states of the United States of America and it has on file in is office at the present time orders upwards of Twenty-Five Thousand Dollars ($25,000.00) for shipment in Interstate Commerce to its various customers throughout the United States.

That on or about the tenth day of April a strike was inaugurated against the said Stability Leather Goods Manufacturing Company since which time the factory and place of business of said company has been picketed [furing] all working hours of the day by a number of men who congregate at, around, about and adjacent to the factory and place of business of the said company and that their presence as such pickets has prevented said company from procuring any help to carry on its said business and to manufacture and ship its goods in Interstate Commerce.

Affiant further states that said pickets stand around and in front of the entrance to the factory of said company and have done so daily since the strike and boycott as aforesaid was inaugurated against said company.

(Signed) H. M. WILSON.

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Signed) MARIE WALTON,
(Seal) Notary Public.

My commission expires December 1, 1923.

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28 (Affidavit of Edward Potts.)

State of Missouri,
City of St. Louis—ss.

EDWARD POTTS, of lawful age, being on his oath duly sworn, states that he has been employed by the James A. Quirk Trunk Company for several months past and that he has no fault to find with his employment; that the hours of labor, scale of wages and conditions under which he is required to work are satisfactory.

Affiant further states that a strike was called by a number of former employees on the 10th day of April, 1920 and that since that time while on his way to work he has been threatened and intimidated by Charles Morgan and Paul Berry, both

of whom have been picketing the factory and place of business of the said James A. Quirk Trunk Co.

(Signed) EDWARD POTTS

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Signed) MARIE WALTON
Notary Public.

My commisison expires December 1, 1923.

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29 (Affidavit of Arch Zilch.)

State of Missouri,
City of St. Louis—ss.

ARCH ZILCH, of lawful age, being on his oath duly sworn states that he is Superintendent of the James A. Quirk Trunk Company. That a strike was inaugurated against said Company on the 10th day of April, 1920, since which time the factory and place of business of the said James A. Quirk Trunk Company has been picketed and the employees of said company intimidated.

Affiant further states that on or about the 12th day of April he saw Charles Morgan and Paul Berry, two of the pickets operating at said factory, stop employees as they came out of the factory and warn them not to return to work there again.

Affiant further states that said James A. Quirk Trunk Company was compelled to close its factory at 915 Wash Street. That it is engaged in Interstate Commerce and that it has orders on file for immediate delivery amounting to about Ten Thousand Dollars ($10,000.00) and owing to the activity of the pickets around the factory and place of business of said company they are prevented from filling said orders.

(Signed) ARCH ZILCH

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Signed) MARIE WALTON
(Seal) Notary Public.

My commission expires December 1, 1923.

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30 (Affidavit of Herman McCommis.)

State of Missouri,
City of St. Louis—ss.

HERMAN MCCOMMIS, of lawful age, being on his oath duly sworn, states that he is employed at the factory of the James A. Quirk Trunk Co., and has been for several months past. That he has no fault to find with the scale of wages, hours of work or the conditions under which he is required to work. That a strike was inaugurated against the said company on or about the 10th day of April, 1920 and since the inauguration of the strike as aforesaid, Charles Morgan and Paul Berry, strikers doing picket duty at and around the place of business of the said company followed affiant to his home from the factory at about 5:30 P. M. on April 17th, and told affiant's mother, in his presence, that if affiant went to work again at the factory he would get his head knocked off. Morgan also warned him at the factory and told him to stay away and not come back until the strike is over.

(Signed) HERMAN McCOMMIS

Sworn and subscribed to before me on this, the 6th day of May, 1920.

(Signed) MARIE WALTON
(Seal) Notary Public.

My commission expires December 1, 1923.

(Endorsed: "Filed May 7, 1920, W. W. Nall, Clerk.")

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31 (Restraining Order)

This cause coming on to be heard, upon motion of complainants by their counsel, for a restraining order, without notice, upon verified petition, affidavits in support thereof, and the Court being sufficiently advised in the premises, that complainants will suffer immediate and irreparable damages unless defendants be restrained of the unlawful acts complained of;

Now Therefore, upon the filing of bond in this cause in the sum of Five Thousand Dollars ($5,000.00), which is now approved and filed herewith,

It is hereby ordered, adjudged and decreed that until the 15th day of May, A. D. 1920, the said defendants and each of them, both individually and as officers and agents of the said

Unions, and all the members thereof, and any and all persons in concert with them and in connection with them, and their agents, representatives, associates, aiders, sympathizers, and abettors, are ordered, commanded and enjoined from congregating or loitering about or around the factories and places of business of the Herkert and Meisel Trunk Co., P. C. Murphy Trunk Co., James A. Quirk Trunk Co., Stability Leather Goods Manufacturing Co., and the H. A. Kolb Trunk & Case Co., from picketing same, from using violent, threatening, abusive and offensive language towards the officers, agents and employees of said companies, or those doing business with them, from assaulting, laying hands on, or following said Companies' officers, agents and employees, from inducing or procuring other persons to congregate or loiter at or around the premises of the said companies or to in any manner interfere with the employees of said companies; From visiting said factories and entering the same for the purpose of threatening or intimidating employees of the said companies; from following the employees of said companies when going to and from the factories; From interfering in any manner with the delivery or shipment of goods to or from the factory of said Companies; From compelling or inducing or attempting to compel or induce by use of threats or deception or violence, any person not to enter the employ of the said Companies, if desirous of doing so; And from doing any act or thing whatsoever, by any of the above named means or methods in furtherance of a purpose to impede the business of the said Company, or to impede any of its officers and employees in the free and unhindered conduct of the said companies' business, and to abstain from congregating at or near the premises of said companies with the purpose and in such manner as to intimidate or obstruct, surround or impede in a manner calculated to intimidate any of the employees of said company, or persons seeking employment with said company, in going to, remaining at or going from the premises of said Companies. From either singly or in combination with others, picketing, obstructing, impeding or besetting the streets, alleys or approaches of the premises of said company, with the purpose and in such manner as to intimidate, threaten, impede, obstruct, surround or coerce any of the employees of said companies or persons seeking employment of said companies; and from in any manner interfering with such persons in going to, from, or in remaining at the works or places of business of said Companies and from interfering with such persons anywhere, because of said persons being in the employment of the Herkert & Meisel Trunk Co., P. C. Murphy

Trunk Co., Stability Leather Goods Manufacturing Co., James A. Quirk Trunk Co., and H. A. Kolb Trunk & Case Co., or of their seeking to be employed by them. From going, either singly or collectively, to the homes or places of habitation of employees, or those seeking employment with said companies, with the purpose of intimidating or coercing any or all of them to leave the employment of said companies or from entering their employment.

It is further ordered that the said defendants, and each of them show cause if any they have, on the 15th day of May, 1920, at the hour of 10 o'clock A. M., in the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri, sitting at the Custom House, in the City of St. Louis, State of Missouri, why the prayer of complainants' bill for a preliminary injunction should not be granted.

And it is further ordered that this order shall be in force and binding upon each of the defendants, and all of them named in the bill from and after service upon them of said order, by delivering to them a copy, or by reading the same to them, and shall be binding upon defendants whose names are alleged to be unknown from and after publication thereof by posting or printing, and shall be binding upon all defendants and all other persons whatsoever from and after the time they severally have knowledge of the allowance of this order.

Hereof fail not under the penalty of the law thence ensuing.

Dated at St. Louis, Missouri, this 7th day of May, 1920, at the hour of 10 o'clock A. M.

(signed) C. B. FARIS, Judge.

(Endorsed: Filed May 7, 1920, W. W. Nall, Clerk.")

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32 Bond on Temporary Restraining Order.

Know All Men By These Presents, That Herkert & Meisel Trunk Co., P. C. Murphy Trunk Co., James A. Quirk Trunk Co., Stability Leather Goods Manufacturing Co., H. A. Kolb Trunk & Case Co., corporations, as principals, and Jno. A. Meisel, F. Leo Murphy, Thos. A. Quirk, H. M. Wilson and H. A. Kolb, as sureties, are held and firmly bound unto United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al. Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose

Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tedesco, Fred Tentschert, War Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robert Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steven Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, Geo. Wenk, (hereinafter called the obligees), in the full and just sum of ten Thousand Dollars ($10,000.00) for the payment whereof to the said obligees the said Principals and the said Sureties bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents .

Signed, sealed and dated this 7th day of May, A. D. 1920.

Whereas, the said Principals have applied to the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri for a temporary injunction order and decree against the said obligees in a suit entitled Herkert & Meisel Trunk Co., P. C. Murphy Trunk Co., James A. Quirk Trunk Co., Stability Leather Goods Manufacturing Co., H. A. Kolb Trunk & Case Co., all corporations, Complainants, versus United Leather Workers International Union, Local Lodge or Union No. 66, et al., Defendants, in Equity No. 5353, said defendants in said cause being the obligees herein:

And whereas the said Court has granted such a tem-
33 porary injunction order in said cause conditioned upon the giving of this bond in Five Thousand Dollars to said Obligees;

Now Therefore, the condition of this obligation is such that if the said Principals shall pay to the said Obligees such costs and damages as may be incurred or suffered by any of the said defendants (obligees) who may be found to have been wrongfully enjoined or restrained by said order of temporary injunction, if said order of temporary injunction shall be dissolved as to said Defendants or any of them, then this obligation shall be null and void; otherwise. it shall remain in full force and effect.

Witness our hands and seals at the City of St. Louis, Missouri, in the Eastern Division of the Eastern Judicial District, the 7th day of May, 1920.

HERKERT & MEISEL TRUNK CO.,
By John A. Meisel (Seal)
Pres.

P. C. MURPHY TRUNK COMPANY,
By F. Leo Murphy, Gen. Mgr. (Seal)

JAMES A. QUIRK TRUNK CO.,
By Thos. A. Quirk (Seal)
Pres.

STABILITY LEATHER GOODS MANUFACTURING CO.,
By H. M. Wilson, Pres. (Seal)

H. A. KOLB TRUNK & CASE CO.,
By H. A. Kolb (Seal)

(Signed)
John A. Meisel,
F. Leo Murphy,
Thos. A. Quirk,
H. M. Wilson,
H. A. Kolb.

The foregoing bond approved May 7th, 1920 at 3 o'clock P. M.

(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed May 7 1920 W. W. Nall, Clerk.")

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34 (Order Extending Time to File Return to Order to Show Cause, and Continuing Hearing on Application for Temporary Injunction.)

On application of said defendants, the complainants not objecting thereto, the Court doth

Order that the said defendants be allowed until May 21st 1920 to file their return to the rule to show cause, that the hearing of the application of complainants for a temporary injunction be postponed until that day, and that the temporary restraining order remain in full force and effect.

(May 15, 1920. C. B. Faris, Judge.)

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35 (Return to Rule to Show Cause Filed; Order Postponing Hearing on Application for Temporary Injunction.)

Now at this day come the parties hereto by their respective solicitors, and the said defendants by leave of Court file their return to the rule to show cause, whereupon the Court doth

Order that the hearing of this cause upon the application of complainants for a temporary injunction be postponed until May 22d, 1920, at Ten o'clock, A. M., and that the temporary restraining order remain in full force and effect.

(May 21, 1920, C. B. Faris, Judge.)

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36 (Return to Rule to Show Cause.)

Come now all of the above named defendants, except Edward Shilling, Henry Schnitz, and Robert Worsing, who have not been personally served with a copy of the restraining order herein granted, and Walter Dechant, and for return to the order of this honorable Court heretofore made on the 7th day of May, 1920, to show cause why the prayer of the complainants' bill herein filed for a preliminary injunction should not be granted against them, state as follows, to-wit:

That the bill of complaint in this cause filed, does not state facts sufficient to entitle the plaintiffs to the relief sought nor to any equitable relief.

That the allegations contained in the bill of complaint herein filed by the plaintiffs are indefinite, uncertain, state no overt acts of these defendants or either of them, in pursuance of the conspiracy alleged in the said bill of complaint to exist between them, for the purpose of injuring and destroying the business of the complainants, and preventing the employees of the complainants from continuing their said employment.

That the said restraining order, and each and every order contained in same, is in violation of Article 1, of the amendments to the Constitution of the United States, granting the right of freedom of speech and peaceful assembly to all citizens of the United States, in that it constitutes an abridgment of these rights, so guaranteed to them as citizens of the said United States, and also of Article 14, of the amendments to the Constitution of the United States, in that they constitute a denial to the said defendants of the equal protection of the law.

That the said restraining order is in violation of the express provisions of the laws of the United States, and particularly Section 20, of the Statute known as the Clayton Act of October 15, 1914.

37 And for further return to the said order to show cause, the said defendants and each of them above named, deny each and every allegation in the said bill of complaint contained.

Wherefore, the said defendants pray this honorable Court to dissolve the restraining order heretofore issued in this cause, and that the complainants' application for a temporary injunction be denied.

And for further return to the said order to show cause, the said defendants and each of them, deny that they have used violent, threatening and abusive language towards the officers, agents and employees of the complainants, or those doing business with them, or what they assaulted, laid hands on or followed the said complainants' officers, agents and employees, or that they intimidated the employees of the said complainants while going to or from their factories, that they have interferred with the delivery or shipment of goods to or from the factories of the said complainants, that they have attempted to compel or to induce by the use of threats, deception or violence, any person not to enter the employ of said complainants, if desirous of doing so; that they have either singly or in combination with others, intimidated, threatened, impeded, obstructed, surrounded or coerced any of the employees of the said complainants or persons seeking employment therefrom, or have followed the employees of the said complainants to their homes for the purpose of intimidating or coercing any or all of the said employees of the complainants to leave their employment or from entering their employment.

And for further return, defendants and each of them as hereinbefore named, deny each and every other allegation in the said bill of complaint contained.

38 And for further return to the said order to show cause, the said defendants and each of them state that all of these defendants save and except United Leather Workers International Union, Local Lodge or Union No. 66, and Edward Schilling and Al. Birkenmeier, were on and

previous to the.....day of....., 1920, employees of the complainant corporations, and that on and previous to the aforesaid date, the complainants, through their officers, agents and representatives, unlawfully wrongfully and intentionally, conspired with each other to unjustly discriminate against these defendants, who are members of the said Local Union, by seeking to compel them to accept and to sign agreements which permitted such unjust discrimination to be made, whereupon, these defendants, in the free exercise of their Constitutional right as citizens of the United States, and because of the fact of such unjust discrimination, peacefully withdrew from the employment of the complainants.

Wherefore, the said defendants, and each of them, pray this honorable Court to dissolve the temporary restraining order, and all orders therein contained hereinbefore issued, that the temporary injunction prayed for be denied, that the complainants' bill be dismissed, and for such further orders touching the premises as shall be just and proper.

(Signed) JOHN P. LEAHY,
(Signed) LENA FRANK,
Solicitors for all Defendants
Except Edward Schilling.

State of Missouri,
City of St. Louis—ss.

Before the undersigned, a Notary Public, within and for the City and State aforesaid, personally came A. M. Reuter, Al. Birkenmeier, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry,
39 John Remstedt, Benjamin Schnitz, Charles Tadesco, Fred Tentachert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, George Wenk, and N. Ehlinbeck, who being by me duly sworn, depose and say that they have read over the above and foregoing return, and that they know the contents thereof, and the facts set out therein are true, ex-

cept such facts as are stated upon information and belief, and as to these facts, they believe the same to be true.

Al. Birkenmeier
Chas. Kaysing
John Smith
Michael Little
John Lichner
Chas. E. Morgan
Paul M. Berry
Ambrose Kintz
Steve Wilhelm
Esther Bradley
Nora Wieland
Malley Colley
Thomas Halliburton
J. Piny
Benjamin Schnitz
Ray Watke
Walter Webber
John Zimerman
Herman Dieckhoerner
Joe Kuhn
Wm. Balmer
Robert Guinne
Tom Caito
Anthony Pauly
Leo Pauly
Steve Zoeller
Tony Sanson
Sylvester Schnitz
Geo. Wenk
Frank Caito
John Remstedt
Rudolph Koob
Charles Tadesco
Walter Xeihn
Annie Stecker
Fred Tentachert
Gus W. Nenninger
Arthur M. Reuter
H. Ehlinbeck

Sworn to and subscribed before me this 14th day of May, 1920.

(Signed) LENA FRANK,
Notary Public, St. Louis, Mo.

(Seal)

My term expires Nov. 29, 1922.

(Indorsed: "Filed May 21, 1920, W. W. Nall, Clerk.")

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40 (Record Entry of Hearing on Application for Temporary Injunction.)

Now at this day come the parties hereto by their respective solicitors and this cause coming on for hearing upon the application of complainants for a temporary injunction, the introduction of evidence is commenced but not being concluded at the hour of adjournment, the further hearing of said matter is postponed until June 1st, 1920, at Ten o'clock A. M., the temporary restraining order to remain in full force and effect.

(May 22, 1920. C. B. Faris, Judge.)

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41 (Record Entry of Filing of Answer.)

Now at this day come the said defendants by solicitor, and file their joint answer in this cause.

(May 27, 1920. C. B. Faris, Judge.)

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42 (Answer of Certain Defendants to Bill of Complaint.)

Come now all the above named defendants, except Edward Schilling, Robert Worsing and Henry Schnitz, who have not been personally served with a copy of the process of this Court, and Walter Dechant, and for answer to the complainants bill of complaint herein filed, states as follows, to-wit:

That the said bill of complaint does not state facts sufficient to entitle the plaintiffs to the relief sought nor to any equitable relief.

That the allegations contained in the said bill of complaint are indefinite, uncertain, state no overt acts of the defendants or either of them, in pursuance of the conspiracy alleged in the said bill of complaint to exist between the said defendants, for the purpose of injuring and destroying the business of the complainants and preventing the complainants from carrying out their contracts with their various customers.

Wherefore, the said defendants pray this honorable Court to dissolve the restraining order heretofore issued in this cause, that injunction for a temporary injunction be denied, that the complainants' bill of complaint be dismissed, and that they be hence discharged with their costs.

And for further answer to the complainants' said bill of complaint, these defendants further deny that they or either of them have illegally determined that each of the said complainants should on the 1st day of April, 1920, or at any other time, enter into a contract with Local Union No. 66, United Leather Workers International Union, by which each of the said complainants would unionize its said business, and adopt what was commonly called a "closed shop" and that they would not permit to work in their factories as trunkmakers, any persons who are not members in good standing of the said Local Union, and that if complainants refused to accept such demands, they would ruin the said Inter-
43 state Commerce business of each of them; or that they, the said defendants, on the 10th day of April, 1920, or at any other time, acting individually or on behalf of the said Local Union No. 66 aforesaid, unlawfully, wrongfully

and intentionally conspired with each other and with various other persons to injure and destroy the business of the complainants and to prevent the employees of the complainants from continuing their said employment, unless the said complainants and each of them would yield to the defendants' demands as aforesaid, or that the said defendants have sought and endeavored to induce, force and compel, or did induce, force and compel employees of the complainants to stop working for the said complainants, or that they or either of them assaulted, threatened, or abused complainants' employees, or followed the said employees to and from their houses, or used abusive language towards them, or either of them, or by the use of abusive language and boisterous conduct, have so intimidated the said employees as to force them to quit the complainants' employment against their wills, or that they have thereby prevented the complainants from engaging in or carrying on Interstate Commerce business, or interfered with or obstructed the complainants in the manufacture and shipment of the products of their various factories, or that the said defendants, or any persons authorized by them, have declared a boycott against the said complainants or are prosecuting the same by the said unlawful methods, or that the said defendants have kept continually in front of, around and adjacent to the place of business of the said complainants large numbers of men who by force or numbers, menaces and threats, have so intimidated the employees and persons seeking to become employees of the said complainants, as to prevent them from entering the places of business of the said complainants, for the purpose of destroying the Interstate Commerce business of the complainants or preventing them from carrying out their contracts with their various customers, unless they acquiesced in the demands of the defendants; or that the defendants are continually mass picketing for the aforesaid purposes, or that
44 they have any intention of continuing the mass picketing, or that they have prevented persons seeking employment with the said complainants from engaging in such employment, or that they or any person authorized by them, have threatened or are continuing to threaten, assault and wound the said employees, unless they quit their said employment, or that the said defendants by conspiracy or by unlawful conduct upon their part, induced and coerced large numbers of employees of complainants against their will to quit the complainants' employment, or that they are continuing to use unlawful methods for the

purpose of coercing or forcing complainants' employees to quit their employment against their wills, or that they have by unlawful conduct or methods prevented large numbers of employees of the complainants' from engaging in the complainants' service, or that they have succeeded in terrifying many of the employees of the said complainants, so that they are afraid to return to work, though anxious to do so, or that they have by unlawful acts maliciously obstructed or prevented the said complainants from procuring the necessary help to receive and ship goods in Interstate Commerce, or that they have declared that they will continue to do so, unless the said complainants accept their demands.

And for further answer to the said bill of complaint, these defendants further deny that they, their agents, associates or confederates, or any person authorized by them, have entered into a conspiracy in restraint of Interstate Commerce and in violation of the provisions of the Sherman Anti-Trust law of July 2, 1890, or of the Clayton Act of October 15, 1914, or that they are endeavoring to destroy the interstate of foreign business of the said complainants or each of them, or that they have inflicted and will continue to inflict upon the complainants and each of them irreparable damage, or that they, their agents or any persons authorized by them, are endeavoring or will continue to destroy the Interstate Commerce business of the complainants or that they have undertaken by conspiracy or by illegal methods, to prevent
45 complainants from the exercise of any right to engage in Interstate Commerce, or to deny to complainants any such right, or that the complainants are entitled to an accounting against these defendants or a judgment against them or either of them, or that they, their agents or other persons authorized by them, or associated with them, are endeavoring to monopolize labor or have combined or conspired to monopolize labor in preparing goods in the complainants' said lines of manufacture in Interstate Commerce, contrary to the terms of the Sherman or Clayton Acts, or that they will continue to do so, in direct violation of the provisions of the said Acts.

And for further answer to the allegations of the complainants' bill of complaint herein filed, these defendants and each of them as hereinbefore named, deny each and every other allegation in the said bill of complaint contained.

And for further answer to the said complainants' bill of complaint, these defendants and each of them state that all

of these defendants, save and except United Leather Workers International Union, Local Union No. 66, and Edward Schilling and Al. Birkenmeier, were on and previous to the 10th day of April, 1920, employees of the complainant corporations, and that on and previous to the aforesaid date, the said complainants, through their officers, agents, representatives and associates, unlawfully, wrongfully and intentionally conspired with each other to establish a monopoly and trust in the manufacture of leather goods in the said City of St. Louis, and to unjustly discriminate against these defendants, who are and were members of the said Local Union No. 66, by seeking to compel them to accept certain agreements relative to their employment with the said complainants, which permitted such unjust discrimination to be made; that although the said complainants had entered into an agreement, on to-wit—the said .... day of April, 1920 with these defendants as their employees, which fully provided the terms under which the said defendants should work, in said employment, yet, thereafter, to-wit, on the .... day of
46 April, 1920, the said complainants repudiated the said agreement and endeavored to force these defendants to sign another agreement, which would permit such unjust discrimination to be made against them while in said employment by the complainants as members of the said Local Union, whereupon these said defendants, save and except United Leather Workers International Union, Local Union No. 66, Edward Schilling and Al Birkenmeier, in the free exercise of their Constitutional right as citizens of the United States, and because of the fact of such unjust discrimination, peacefully withdrew from the employment of the complainants.

For further answer to the complainants' said bill of complaint, these defendants aver that the complainant corporations are corporations of the State of Missouri, and that all of these defendants are residents of the State of Missouri, and that this Honorable Court has acquired no jurisdiction whatever over the persons of these defendants, and has no lawful power to proceed with the trial thereof, or to issue an injunction against them, or grant the equitable relief sought by these complainants.

Wherefore, these said defendants, and each of them, pray this Honorable Court to dissolve the temporary restraining order and all orders therein contained, heretofore issued, that the application for the temporary injunction of the complainants be denied, that the complainants' bill be dismissed, and

for such further orders touching the premises as shall be just and proper.

(Signed) JOHN P. LEAHY
(Signed) LENA FRANK
Solicitors for all Defendants Except Edward Schilling, Robt Worsing, Henry Schnitz, and Walter Dechant.

Answer under oath expressly waived by all complainants.

Received Copy Matt J. Holland, May 27, 1920.

(Endorsed: "Filed May 27, 1920, W. W. Nall, Clerk.")

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47 (Hearing on application for temporary injunction concluded, argued and submitted).

Now at this day come again the parties hereto by their respective solicitors, and this cause coming on to be further heard upon the application of complainants for a temporary injunction herein, the introduction of evidence is resumed and concluded and the said application argued by counsel and submitted to the court upon briefs to be hereinafter presented, the temporary restraining order to remain in full force and effect.

(June 2, 1920. C. B. Faris, Judge.)

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48 (Oral Opinion of Court announcing awarding temporary injunction).

Now at this day there is orally announced by the Court its opinion in this Cause awarding a temporary injunction in favor of said Complainants.

(July 15, 1920, C. B. Faris, Judge.)

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49 (Order setting cause for hearing.)

By consent of parties, the Court doth Order that this cause be and the same is hereby set down for hearing before the Court on September 25th, 1920, at ten o'clock A. M.
(September 7, 1920. C. B. Faris, Judge.)

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50 (Order granting Temporary Injunction, etc.)

In the District Court of the United States for Eastern Division of the Eastern Judicial District of Missouri.

Herkert & Meisel Trunk Company, a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Company, a corporation, Stability Leather Goods Manufacturing Company, a corporation, and H. A. Kolb Trunk & Case Company, a corporation, Complainants,

No. 5353. vs. In Equity.

United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, Defendants.

This cause having heretofore come on to be heard upon the application of said complainants for a temporary injunction as prayed in their bill of complaint herein, and upon the joint return to rule to show cause as filed by all of the said defendants (except Edward Schilling, Henry Schnitz and Robert Worsing), and upon the testimony adduced in open Court on behalf of said complainants and on behalf of said defendants, and upon the arguments and the briefs of counsel, and having been submitted to the Court and taken under advisement, the Court being fully advised in the premises doth find, order, adjudge and decree, as follows:

1. The defendants Edward Schilling, Henry Schnitz and Robert Worsing have not been served by the Marshal with process, nor have they entered their appearance herein, and are therefore are not included within the scope of this order.

51 2. In so far as the joint return of defendants challenges the sufficiency of the bill of complaint in this

cause, and includes a motion and prayer to dissolve the restraining order and to dismiss the bill of complaint for want of equity, the Court Orders that said motions, and each of them, be and the same are hereby denied.

3. The Court finds that the complainants are corporations duly organized and existing under the laws of the State of Missouri, and having their principal offices and places of business in the City of St. Louis, Missouri, within the Eastern Division of the Eastern Judicial District of Missouri. That said complainants are and for many years past have been engaged in the business of manufacturing trunks, leather goods and leather bags, and have built up, respectively, large and valuable businesses in such trade. That each of said complainants have been and are buying and receiving large quantities of the raw materials from which their finished products are manufactured, said raw materials being shipped to said complainants from points outside of the State of Missouri in interstate commerce. That each of said complainants has a large number of customers in the various states and territories of the United States, to which customers it has been shipping and will continue to ship, in interstate commerce, the trunks, leather goods and leather bags, so made and manufactured. That each of said complainants have accepted orders for such products from its customers who are demanding that such orders be filled and threatening cancellation of such orders unless shipments are made promptly. That each of said complainants employs a large number of persons, both men and girls, many of which employees are young and timid and easily frightened. That the amount in controversy, as to each of said complainants, exceeds the sum of Three Thousand Dollars, exclusive of interest and costs; and that the value of the property and property rights herein involved approximates the sum of One Million Dollars.

52 That said defendants, prior to the institution of this suit, conspired together to compel the said complainants to unionize their respective plants, factories and businesses, and to force said complainants to employ none but members in good standing of defendant Local Lodge or Union No. 66 of the United Leather Workers International Union; or, failing in such demands, to harass, impede, injure and destroy the businesses of said complainants. That, in pursuance of said conspiracy to injure the businesses of said complainants, the said complainants having refused to accede to the demands of said defendants, the said defendants, and

their agents, associates and confederates committed divers and sundry unlawful acts, as more fully set forth and charged in the bill of complaint, and is found and recited in the oral opinion of the Court, and as hereinafter enjoined in this order. That said complainants have suffered irreparable injury and damage by reason of the said acts of the said defendants in this cause, and that further such irreparable injury and damages will be suffered by said complainants, and each of them, if relief be not afforded by the issuance of an order of temporary injunction. That said defendants are, and each of them is, wholly insolvent; that an action or actions for damages would be of no avail to the said complainants, and that complainants have no adequate remedy at law.

4. Upon consideration of and by reason of the foregoing findings, and of the pleadings and proofs adduced in this cause, it is Ordered, Adjudged and Decreed, that upon said complainants filing a good and sufficient bond in the sum of Ten Thousand Dollars to be approved by the Judge or Clerk of this Court, the said defendants and each of them, and their agents, associates, servants and confederates, be and they are and each of them is hereby strictly enjoined and restrained until the further order of this Court:—

(A). From compelling or inducing, by threat, intimidation, force or abusive or violent or insulting language,
53 or by force of numbers, any of the employees of any of the complainants to leave such service, or to fail or refuse to perform their duties as such employees; and from compelling or attempting to compel patrons or intending patrons of said complainants not to patronize or deal with said complainants or any of them.

(B). From interfering, by threats or violence or intimidation or violent or abusive language or by force of numbers, with persons seeking to make deliveries of goods or products to the places of business of any of said complainants, or hauling or taking merchandise therefrom.

(C). From interfering by force or violence with any of the employees of any of said complainants for the purpose of compelling them, or any of them, to leave such employment.

(D). From obstructing the entrances or the streets, alleys, approaches or premises adjacent to the places of business of any of the said complainants, or entering the said places of business, for the purpose of interfering with or

obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, force of numbers, violent or abusive language any of the employees of any of said complianants to refuse or fail to perform their duties as such.

(E). From picketing in front of the place of business of any of said complainants, or in the immediate vicinity thereof, for the purpose of interfering with or hindering or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, violence or abusive language or abusive persuasion any of the employees of any of said complainants to refuse or fail to perform their duties as such.

(F). From trespassing upon or going upon the premises or place of business of any of said complainants for the purpose of interfering with the contracts of employment between such complainant and its employees, or for the purpose of inducing such employees to fail or refuse to perform their duties as such.

54 (G). From assaulting, laying hands on or following any of the employees of any of said complainants, when going to or leaving any of the places of business of any of said complainants, and from calling at the homes or places of residence of such employees, for the purpose, by threats, violence, intimidation, or force of numbers, or vile or insulting and threatening language, directed against such employees or members of their families, of compelling or inducing such employees to fail or refuse to perform their duties as such.

It is Further Ordered that the bond in Ten Thousand Dollars which has hereinbefore been directed to be given and which is now presented, be and the same is hereby approved; and that this temporary injunction be and the same is now therefore declared to be in full force and effect.

Dated, at St. Louis, Missouri, this Sept. 16, 1920, at 10 A. M.

(Signed) C. B. FARIS
U. S. District Judge.

(Indorsed: Filed Sept. 16, 1920. W. W. Nall, Clerk.)

55 Bond upon Temporary Injunction Decree.

Know All Men By These Presents, that we Herkert & Meisel Trunk Company, P. C. Murphy Trunk Company, James A. Quick Trunk Company, Stability Leather Goods Manufacturing Company, and H. A. Kolb Trunk and Case Company, corporations, as Principals, and John A. Meisel, Alfred E. Baker, Thos. A. Quirk, H. A. Kolb as surities, are held and firmly bound unto United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmierer, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Deschant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Benjamin Schnitz, Theo Summers, Charles Tadesco, Fred Tenstschert, Ray Watke, Walter Webber, John Zimmerman, Herman Diekhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, and George Wenk,(Hereinafter called the obligees) in the full and just sum of Ten Thousand Dollars ($10,000.00) for the payment whereofto the said obligees the said Principals and the said Sureties bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents,

Signed, sealed and dated this 16th day of September A. D. 1920.

Whereas, the said Principals have applied to the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri for a decree of temporary injunction against the said obligees, in the cause entitled Herkert & Meisel Trunk Company, P. C. Murphy Trunk Company, James A. Quirk Trunk Company, Stability Leather Goods Manufacturing Company, and H. A. Kolb Trunk & Case Company, all corporations, Complainants, versus United Leather Workers International Union, Local Lodge or Union No. 66, and others, Defendants in Equity No. 5353, said defendants in said cause being the obligees herein:

56 And whereas the said District Court, upon hearing, has granted such a decree of temporary injunction in said cause conditioned upon the giving of this bond in Ten Thousand Dollars to said Obligees;

Now Therefore, the condition of this obligations is such that if the said Principals shall pay to the Obligees such costs and damages as may be incurred or suffered by any of the said Obligees who may be found to have been wrongfully enjoined or restrained by said decree of temporary injunction, if said interlocutory decree of temporary injunction shall be dissolved as to the said Obligees (Defendants) or any of them, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

Witness our hands and seals at the City of St. Louis, Missouri, in the Eastern Division of the Eastern Judicial District of Missouri, this the 16th day of September 1920.

HERKERT & MEISEL TRUNK COMPANY,
By John A. Meisel, Pres. (Seal).
P. C. MURPHY TRUNK COMPANY'
By Alfred E. Baker, Pres. (Seal).
JAMES A. QUIRK TRUNK COMPANY,
By Thos. A. Quirk, Pres. (Seal).
STABILITY LEATHER GOODS MANUFACTURING COMPANY,
By Mat J. Holland, Ttty, in fact. (Seal).
H. A. KOLB TRUNK & CASE COMPANY,
By Harry A. Kolb, Pres. (Seal).

JOHN A. MEISEL
THOS. A. QUIRK
ALFRED E. BAKER
H. A. KOLB

The foregoing bond is approved this September 16, 1920 at 10:30 M.

C. B. FARIS
United States District Judge.

(Indorsed: "Filed Sept. 16, 1920. W. W. Nall, Clerk.)

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57 (Record Entry of filing of Motion of certain defendants for a rehearing on application for a Temporary Injunction.)

Now on this day come the said defendants by solicitor, and file a motion for re-hearing in this cause.

(September 21, 1920. C B. Faris, Judge.)

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58 (Motion of certain defendants for rehearing of application for a Temporary Injunction.)

Now come all of the above-named defendants save and except Edward Schilling, Henry Schnitz and Robt. Worsing, who have not been served with process in this case and have not entered their appearances, and move the Court to set aside the order granting injunction in this cause as against them, and to grant them a new trial of same for the following reasons, to-wit:

1. The Court erred in overruling and denying the allegation in defendants' return challenging the sufficiency of the bill of complainant in this cause and in over-
59 ruling and denying motion and prayer to dissolve the restraining order and dismiss the bill of camplaint for want of equity filed by defendants in this cause.

2. The Court erred in holding that the complainants were entitled to maintain this suit inasmuch as no active interference with interstate shipments by the complainants were shown by the evidence adduced at the hearing of the application for the order of temporary injunction.

3. The Court erred in its finding that the defendants entered into a conspiracy with each other to compel the complainants to unionize their respective plants, factories and business, and to force the said complainants to employ none but members in good standing of the defendants' Local lodge and union No. 66 of the United Leather Workers International Union, or failing in such demands, to harass, impede, injury and destroy the business of the said complainants for the reason that there was no evidence adduced at the said hearing to support the allegation of conspiracy contained in the complainants bill, but on the contrary, all evidence touching this issue was excluded by the Court at said hearing.

4. The Court erred in its finding that the defendants in pursuance of the alleged conspiracy to injury the business of the said complainants made demands upon the
60 complainants which the complainants refused, there being no evidence to support this finding, but on the contrary, the defendants' offered to prove that an adjustment of the controversies between the complainants and the defendants had been made by outside parties which was acceptable at first by the complainants but afterwards rejected by them, which proof was denied by the Court.

5. The Court erred in its finding that in pursuance of the alleged conspiracy the defendants and their agents, associates and confederates committed divers and sundry unlawful acts as more fully set forth and charged in the bill of complaint, and as contained in the oral opinion of the Court and hereafter enjoined in the order granting the temporary injunction.

6. That the Court erred in its finding that the plaintiffs suffered irreparable injury by reason of the acts of the defendants in this cause, and that further irreparable injury and damages would be suffered by the complainants and each of them if relief be not granted.

7. The Court erred in ordering the temporary injunction to issue containing each and every one of the following specifications, the same not being supported by any evidence in this cause and being in clear violation of the rights of these defendants, and in particular of the inhibition imposed upon the Court as to the granting of permanent or temporary injunctions in disputes between employers and
61 employees as provided by the laws of the United States and particularly by Section 20 of the Act of October 15, 1914. (Clayton Act):—

(A). From compelling or inducing, by threat, intimidation, force or abusive or violent or insulting language, or by force of numbers, any of the employees of any of the complainants to leave such service, or to fail or refuse to perform their duties as such employees; and from compelling or attempting to compel patrons or intending patrons of said complainants not to patronize or deal with said complainants or any of them.

(B). From interfering, by threats or violence or intimidation or violent or abusive language or by force of numbers, with persons seeking to make deliveries of goods or products to the places of business of any of said complainants, or hauling or taking merchandise therefrom.

(C). From interfering by force or violence with any of the employees of any of said complainants for the purpose of compelling them, or any of them, to leave such employment.

(D.) From obstructing the entrances or the streets, alleys, approaches or premises adjacent to the places of business of any of the said complainants, or entering the said places of business, for the purpose of interfering with or obstructing such business, or for the purpose of compelling or

inducing, by threats, intimidation, force of numbers, violent or abusive language any of the employees of any of said complainants to refuse or fail to perform their duties as such.

(E). From picketing in front of the place of business of any of said complainants, or in the immediate vicinity thereor abusive language any of the employees of any of said constructing such business, or for the purpose of compelling or inducing, by threats, intimidation, violence or abusive language or abusive persuasion any of the employees of any of said complainants to refuse or fail to perform their duties as such.

(F). From trespassing upon or going upon the permises or place of business of any of said complainants for the purpose of interfering with the contracts of employment between such complainant and its employees, or for the purpose of inducing such employees to fail or refuse to perform
62 their duties as such.

(G). From assaulting, laying hands on or following any of the employees of any of said complainants, when going to or leaving any of the places of business of any of said complainants, and from calling at the homes or places of residence of such employees, for the purpose, by threats, violence, intimidation, or force of numbers, or vile and insulting and theratening language, directed against such employees or members of their families, of compelling or inducing such employees to fail or refuse to perform their duties as such.

(Signed) JOHN P. LEAHY
LENA FRANK
Attorney for Defendants.

(Endorsed: "Filed Sept. 21, 1920, W. W. Nall, Clerk.")

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63 (Final hearing September 25, 1920; Motion of certain defendants for a rehearing on application for a Temporary Injunction overruled.)

Now at this day come the parties hereto by their respective solicitors, and this cause having been heretofore set down for final hearing at this day and hour, the same is argued by counsel and submitted to the Court, upon the testimony heretofore adduced upon the application for a temporary injunction.

The Court having fully considered the motion of defendant for a re-hearing of said application for temporary injunction, doth

Order that said motion be overruled.

(September 25, 1920. C. B. Faris, Judge.)

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64 (Opinion upon the final hearing announced and filed.)

The Court this day announces and files its opinion upon the final hearing of this cause.

(November 26, 1920. C. B. Faris, Judge.)

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65 (Opinion, November 26, 1920, upon the granting of a Permanent Injunction.)

Plaintiff's, and each of them, are engaged in the manufacture of trunks, valises, hand-bags and similar articles, which they sell on orders in the state of Missouri, and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiff's business consists in sales, on orders for their products, in other states than the State of Missouri.

Prior to, and at the time of, the issuance of the temporary restraining order herein, each of the plaintiffs had on file many unfilled orders from states other than the State of Missouri, for goods, which goods, when manufactured were to be shipped in interstate commerce. A strike was called by the defendants, which are Local Labor Unions, or officers and members of such Unions, pursuant to a vote taken by the Unions and in the regular way under the rules and by-laws of the Unions. This strike was called after a fruitless
66 effort to agree upon wages and upon a contract embracing the terms and conditions of future employment, which seems to have had therein the phase of collective bargaining.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employees of the plaintiffs quit plaintiffs' employment. Thereafter, and until the temporary restraining order was issued herein, the several shops of plaintiffs were picketed by striking employees; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs, or some of them. During this picketing

many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employees, and divers employees who continued in the employment of plaintiffs, vile and approbrious names; there were instances of domiciliary visits accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers; so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. Many of the goods in fact the larger proportion thereof, which plaintiffs would have made, but were in the mode above mentioned prevented from making, would have been shipped when manufactured, to other states, to fill what is called in the record "interstate orders". There was no actual interference with, or hinderance of any inter-
67 state movement, or shipment of any goods made by plaintiffs, or by either of them, for the very simple reason that the goods designed for intertsate shipment have never come into existence on account of the interference mentioned. For as forecast, these goods could not be manufactured because the plaintiff's former workmen struck and quit, and other workmen could not be obtained to manufacture them; these potential workmen being kept away by a too numerous picketing and by threats and intimidation. Such goods as were actually made by plaintiffs have been shipped in intertsate commerce (when such was their destination) without let or hindrance. The methods used by defendants in reventing plaintiffs from obtaining other workmen have been, as stated, in numerous proven instances, unpeaceful and unlawful.

Barring the question of jurisdiction, and the existence of a conspiracy, plaintiffs are unquestionably entitled to the relief by injunction for which they prayed. Indeed, counsel for defendants, seemingly concede this is a tacit way, because the burden of counsels' contention is bottomed solely upon the alleged phases of jurisdiction and absence of a conspiracy. There is no diversity of citizenship involved in the case. If this court has jurisdiction at all, it gets it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209.)

Upon this point it is urged that, since the goods of plaintiffs which they intended to ship in interstate commerce when they came into existence, were not in existence at the time de-

fendants unlawfully interfered with plaintiff's business, the case does not fall either within the purview or protec-
68 tion of the Sherman Anti-Trust Act, supra, and, therefore, this court has no jurisdiction. Confessedly the point urged is at least on principle, a close and difficult one. So much of the language of the Sherman Anti-Trust Act, supra, as seems pertinent to this question, reads thus:

"Every contract, combination, in the form [—] a trust or otherwise, or conspiracy in restraint of trade or commerce among other states, or with foreign nations, is hereby declared to be illegal." (Sec. 1, Act of July 2, 1890, Chap. 647, 26 Stat. 209.)

Pursuant to the provisions of Section 4 of the Sherman Anti-Trust Act, supra, jurisdiction to enforce compliance with the provisions of the Act by injunction is conferred upon the Federal District Courts, sitting as courts of equity. When we read Sections 1 and 4 together, and convert the definition of Section 1 into plain and concise language, it is simply provided, that every conspiracy in restraint of interstate commerce may be enjoined in a federal court; subject, of course, in a labor dispute to the qualifications set out in the Clayton Act. It is strenuously contended by learned counsel for defendants that when Congress referred in the Sherman Anti-Trust Act, to the restraints of interstate commerce, it held in mind the usual and ordinary definition of such commerce; and that the questions of when such commerce begins, and when it ends, are referrable to the well known definitions of this commerce which have long been well settled in the federal courts.

Illustrating this view, and this contention, it was held in the fairly early case of In re Green, 52 Fed. l. c. 113, in an opinion rendered by Judge (afterwards Mr. Justice) Jack-
son, that "when the (interstate) commerce begins is de-
69 termined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but the actual delivery of it to a common carrier for transportation, or the actual commencement of its transfer to another state * * * * Neither the production or manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade and traffic with citizens of other states, nor the preparation for their transportation from the state were produced or manufactured prior to the commencement of the actual transfer or trans-

portation thereof to another state, constitutes that interstate commerce which comes within the regulating power of Congress.." This definition of interstate commerce with reference to when it begins, learned counsel for defendants urge, has been very lately affirmed and followed by the Supreme Court of the United States in the case of Hammer vs. Degenhart, 247 U. S. l. c. 272, where it was said: "Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation". 'When the commerce begins is determined not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to anther state. Mr. Justice Jackson in re Green, 52 Fed. 113.)'".

"This principle has been recognized often in this
70 court (Coe vs. Errol, 116 U. S. 517; Bacon vs. Illinois, 227 U. S. 504, and cases cited.) If it were otherwise all manufacture intended for interstate shipment would be brought under federal control, to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the constitution when they vested in Congress authority to regulate commerce among the states. Kidd vs. Pearson, 128 U. S. 1."

The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust law. If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act, supra. But the matter is not one of first impression in this circuit. Therefore, it is my duty, regardless of any personal views or convictions which I may hold upon the subject to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the 8th Circuit.

In the case of Dowd vs. United Mine Workers of America et al., 148 C. C. A., 495, local citation 51, it was said by the Circuit Court of Appeals of this Circuit, that:

71 "Some of the coal companies were not actually engaged in interstate commerce at the time the alleged acts were committed by the defendants; but they were preparing to do so; and were prevented from do doing, as they allege, by the wrongs of the defendants. It was held in Pennsylvania Sugar Refining Co. vs. American Sugar Refining Co. et al., by the Circuit Court of Appeals for the Second Circuit, 166 Fed. 254, 92 C. C. A., 318, that:

"A conspiracy to prevent a manufacturer who procures his supplies and disposes of his products by means of interstate commerce from engaging in business at all, necessarily places restraints upon such commerce. Its flow is restricted and interrupted. The importation and exportation of articles of commerce are directly prevented, and none the less so because the conspiracy may be of so wide a scope as to interfere with interstate commerce also."

To the same effect in Thomsen et al. vs. Union Castle Mail Steamship Co. et al., 166 Fed. 251, 92 C. C. A., 315 (2nd Circuit.)

It is next objected that the alleged wrongs of the defendants do not constitute an interference with interstate trade or commerce. We do not think, since the case of Loewe vs. Lawlor, 208 U. S. 374, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Lawlor vs. Loewe, 235 U S. 5. 522, 35 Sup. Ct. 170, 59 L. Ed., 341, it can be said that this can be considered an open question. In rendering the opinion of the Supreme Court when the case was last before it, Justice Holmes said:

"The substance of the charge is that the plaintiffs were hat manufcaturers who employed non-union labor; that the defendants were members of the United Hatters of North America, and also of the American Federation of Labor; that in pursuance of a general scheme to unionize the labor employed by the manufacturers of fur hats (a purpose previously made effective against all but a few manufacturers) the defendants and other members of the United Hatters caused the American Federation of Labor to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other states and against dealers who shall deal in them; and that they carried out their plan with such success that they have restrained or destroyed the plaintiffs' commerce with other states."

This charge being proven, the learned justict further said (235 U. S. 534, 35 Sup. Ct. 172, 59 L. Ed. 341):

"We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were
72 proved, and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named."

Again, touching the far-reaching power of Section 1, of the Sherman Anti-Trust Act, supra, it was said by the Supreme Court of the United States in Eastern States Lumber Association vs. United States, 234 U. S. 600, that that section broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce.

After the decision of the Circuit Court of Appeals of the 8th Circuit, in the case of Dowd vs. United Mine Workers etc., supra, the latter case, under the style of United Mine Workers of America vs. Coronado Coal Co., was again before the Circuit Court of Appeals of this Circuit. (258 Fed. 829). The question of jurisdiction was again raised and seemingly, strenuously urged. The court refused to re-examine the question of jurisdiction, bottomed there, as here upon the construction of the provisions of the 1st. Section of the Sherman-Anti-Trust Act, but contented itself with saying upon this point:

"The learned counsel for defendants neither in their voluminous brief (326 printed pages) nor in their oral argument questioned these statements of facts, nor did they seriously attack the sufficiency of the evidence, but they insist that they do not establish that the plaintiffs were engaged in interstate commerce, and therefore these acts were not in violation of the Sherman Act. The leading case relied on is United States vs. Knight, 156 U. S. 1, 15, Sup. Ct. 249, 39 L. Ed. 325, but this case, if not expressly overruled, has been much weakened by the later decisions of the Supreme Court,
and it was so held by this court when this case was
73 here before, 235 Fed. 1, 8, 148 C. C. A., 495. As this court when this case was here before, held that the alleged wrongs and torts of the defendants charged in the complaint, and which at the trial were established by substantial evidence, constituted an interference with interstate commerce, and violated the Sherman Act, that opinion is the law of the case, and cannot be again re-examined."

I need not go into the somewhat complicated facts before the court in the Dowd case, supra. It will suffice to say that if the Coal Companies, which were the plaintiffs therein, were, upon the facts, engaged in interstate commerce, then the plaintiffs here are also, upon the facts, engaged, and were at the time of the happening of the matters and things herein complained of, engaged in interstate commerce. In the Dowd case, the coal, or much of it, which was intended for interstate commerce, but which was prevented from flowing therein by the unlawful acts of the defendants there, had not been mined, and, therefore, was not in existence as a commodity of any sort of commerce for transportation; moreover, one of the plaintiffs had not engaged in business at all, but was preparing to do so, and was prevented by defendants therein from so doing. So, also here, the goods for which plaintiffs had orders in interstate commerce, and which were to be manufactured for shipment therein, were not in existence. They were prevented from coming into existence by the conspiracy of defendants and by the unpeaceful and unlawful overt acts done and committed by defendants in the carrying out of the conspiracy. The broad language of the Dowd case regarded, the additional fact in that case that a loaded car of coal was actually destroyed would seem too negligible a factor to call for a difference in the rule.

74 Therefore, following the rule so clearly announced in the Dowd case and the Coronado Coal Company case, as in duty bound, I am constrained, regardless of my own views, to hold that the plaintiffs here were engaged in interstate commerce and that the acts of defendants operated as restraints upon that commerce within the purview of the first section of the Sherman Anti-Trust Act.

I may dispose of the question of the existence of the conspiracy mere briefly and with less difficulty, at least in my own mind. In order to do this logically a brief reference may again be made to the facts. These facts substantially are, that efforts to agree with plaintiffs on a new contract of employment having failed, the Local Unions, who are the defendants here, immediately called a general strike against the shops of all of the plaintiffs, and thereupon practically all of the employees of plaintiffs quit work and many of them began to picket plaintiffs' shops. This picketing was done in a way that was not lawful, and which is not legally permissible, even under the broad provisions of the Clayton Act. Defendant unions appointed committees to take charge of and manage this strike, which, of course, largely meant to manage the pickets who were engaged in picketing the shops of plain-

tiffs. No extra pay seems to have been given to those members of the Union who did picket duty, though apparently the pickets (as were others of the striking employees) were paid strike benefits by the respective Unions to which they belonged. The pickets volunteered for duty, but as said above, they were in charge of the committees of the Local Unions. If these pickets committed unpeaceful and
75 unlawful acts therefore, absent any protest or disciplinary action by the Local Unions, the latter are liable for such acts. The Unions cannot be heard to say that having charge of and controlling these pickets, they are not to be held liable, for the divers unlawful acts done by the pickets. If it be said that the Unions in such case should have some knowledge or notice of the unlawful acts committed by pickets employed by them, and I think this ought to be conceded, the answer is that such knowledge and notice may be inferred from all the facts and circumstances shown by the evidence.

Neither is it necessary to prove the conspiracy alleged in the complaint by direct evidence. Such a conspiracy may be shown by circumstantial evidence. If the rule were otherwise it would ordinarily be impossible to establish a conspiracy in any case; a fortiori, in a labor dispute.

I conclude that the facts and circumstances disclosed a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit.

It allows that the permanent injunction prayed for by plaintiffs ought to be granted. Let a decree be drawn accordingly.

(Indorsed: "Filed Nov. 6 190 W. W. Nall, Clerk.")

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76 (Decree, January 15, 1921.)

In the District Court of the United States for Eastern Division of the Eastern Judicial District of Missouri.

Herkert & Meisel Trunk Company, a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Company, a corporation, Stability Leather Goods Manufacturing Company, a corporation, and H. A. Kolb Trunk & Case Company, a corporation, Complainants,

No. 5353. vs. In Equity.

United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al. Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Lit-

tle, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Slyvester Schnitz, Gus Nenninger, and Geo. Wenk, Defendants.

This cause having heretofore come on for final hearing, and having been fully tried before and submitted to the Court upon the pleadings and proofs adduced, and upon the arguments and briefs of counsel for the respective parties, the Court being fully advised in the premises doth find, order, adjudge and decree, as follows:

1. The defendatns Edward Schilling, Henry Schnitz and Robert Worsing have not been served by the Marshal with process, nor have they entered their appearance herein, and the bill of complaint is therefore dismissed as to the said three named defendants without prejudice, they being excluded from the designation "defendants" as hereinafter employed in this decree.

2. The Court finds that the complainants are corporations duly organized and existing under the laws of the State
77 of Missouri, and having their principal offices and places of business in the City of St. Louis, Missouri, within the Eastern Division of the Eastern Judicial District of Missouri, and within the jurisdiction of this Court. That, said complainants are and for many years last past have been engaged in the business of manufacturing trunks, leather goods and leather bags, and have built up, respectively, large and valuable businesses in such trade. That said complainants have been and are buying and receiving large quantities of the raw materials from which their finished products are manufactured, said materials being shipped to said complainants from points outside of the State of Missouri in interstate commerce. That said complainants and each of them have large numbers of customers in the various states and territories of the United States, to which customers they have been shipping and will continue to ship, in interstate commerce, the trunks, leather goods and leather bags, so made and manufactured. That said complainants and each of them

have accepted orders for such finished products from its and their said customers who are demanding that such orders be filled, and threatening cancellation of such orders unless shipments be made promptly. That said complainants have finished and completed and ready for shipment large quantities of such finished products which have been ordered and manufactured and prepared for shipment in interstate commerce as aforesaid. That said complainants and each of them employ a large number of persons, both men and girls, many of which employees are young and timid and easily frightened. That the amount in controversy, as to each of said complainants, exceeds the sum of Three Thousand Dollars, exclusive of interest and costs; and that the value of the property and property rights of complainants which are herein involved approximates the sum of One Million Dollars. That said defendants, prior to the institution of this suit, conspired, combined and confederated together to compel the said complainants to unionize their respective plants, factories and businesses, and to force said complainants to employ none but members in good standing of defendant Local Lodge or Union No. 66 of the United Leather Workers International
78 Union; or, failing in such demands, to harass, impede, injure and destroy the businesses of said complainants and each of them. That, in pursuance of said conspiracy to injure the businesses of said complainants, and to restrain the receipt of complainants of their raw materials and to impede the shipment by complainants of their finished products, all in interstate commerce, and upon the refusal by complainants to accede to the aforesaid demands of defendants, the said defendants, and their agents, associates and confederates, committed divers and sundry unlawful acts, as more fully set forth and charged in the bill of complaint and as mentioned in the opinion of the Court and as hereinafter enjoined in this order. That said complainants have suffered irreparable injury and damage by reason of the said unlawful acts of the said defendants in this cause, and that further such irreparable injury and damages will be suffered by said complainants, and each of them, if relief be not afforded by the entry of this decree. That said defendants are insolvent or unable to respond in an action or actions at law, and that complainants have no adequate remedy at law.

3. Now, therefore, the premises considered, it is decreed that the temporary injunction heretofore granted herein be and the same is hereby made permanent, and that said defendants and each of them, and their agents, associates, servants and confederates, be and they are and each of them is perpetually enjoined and restrained:

(A) From compelling or inducing, by threat, intimidation, force, or abusive or violent or insulting language, or by force of numbers, any of the employees of any of the complainants to leave such service, or to fail or refuse to perform their duties as such employees; and from compelling or attempting to compel, by such means, patrons or intending patrons of said complainants not to patronize or deal with said complainants or any of them.

79 (B) From interfering, by threats or violence or intimidation or violent or abusive language or by force of numbers, with persons seeking to make deliveries of goods or products to the places of business of any of said complainants, or hauling or taking merchandise therefrom.

(C) From interfering by threats force or violence with any of the employees of any of said complainants for the purpose of compelling them, or any of them, to leave such employment.

(D) From obstructing the entrances of the streets, alleys, approaches or premises adjacent to the places of business of any of said complainants, or entering the said places of business, for the purpose of interfering with or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, force of numbers, violent or abusive language any of the employees of any of said complainants to refuse or fail to perform their duties as such.

(E) From picketing in front of the place of business of any of said complainants, or in the immediate vicinity thereof, for the purpose of interfering with or hindering or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, violence or abusive language or abusive persuasion any of the employees of any of said complainants to refuse or fail to perform their duties as such.

(F) From trespassing upon or going upon the premises or places of business of any of said complainants for the purpose of interfering with the contracts of employment between such complainant and its employees, or for the purpose of inducing such employees to fail or refuse to perform their duties as such.

(G) From assaulting, laying hands on or following any of the employees of any of said complainants, when going to or leaving any of the places of business of any of said complainants, and from calling at the homes or places of residence of such employees, for the purpose, by threats, violence, intimid-

ation, or force of numbers, or vile and insulting and
80 threatening language, directed against such employees or members of their families, of compelling or inducing such employees to fail or refuse to perform their duties as such.

(4) It is further Ordered that this cause be and the same is hereby referred to Eustance C. Wheeler, Esq., as Special Master, who is hereby appointed and authorized and directed to make inquiry and ascertain and report to the Court with all convenient speed his findings as to the damages sustained by said complainants and each of them by reason of the unlawful and wrongful acts and conduct of the said defendants as hereinbefore stated and adjudged, and that said Master be and he is hereby authorized and directed to take and hear the testimony, subpoena and administer oaths to witnesses, to order the production before him of books, records and papers pertaining to such inquiry, and to do any and all other things pertaining to such inquiry as are properly done and exercised by a master in chancery in such cases.

(5) The Court retains control and jurisdiction of this cause for the purpose of making such other and further orders and decrees herein from time to time as may be proper and the circumstances may require.

(6) It is further Ordered that said complainants have and recover of said defendants their costs herein laid out and expended and that they have execution therefor as at law.

January 15, 1921.

(Signed) C. B. FARIS,
District Judge.

(Indorsed: "Filed Jan 15 1921 W. W. Nall, Clerk.")

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81 (Record Entry of Filing of Motion of Defendants for a Rehearing on Application for a Permanent Injunction.)

Now at this day come the defendants herein by solicitor, and file their motion for a re-hearing in this cause.

(January 20, 1821. C. B. Faris, Judge.)

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82 (Motion of defendants for a rehearing on application for a Permanent Injunction.)

Now come all of the above-named defendants save and except defendants Edward Schilling, Henry Schnitz and Robert Worsing, who have not been served with process in this cause and have not entered their appearance, and as to whom the Bill of Complaint herein filed is dismissed by the decree of the Court herein entered as aforesaid, they being held to be excluded from the designation "defendants" as therein employed, and move the Court to set aside its decree of permanent injunction against all the defendants save those hereinbefore mentioned, made and entered on the 15th day of January, 1921, and to grant them a new trial and a rehearing of same for the following reasons, to-wit:

83 1. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in overruling and denying the defendants' return to the order to show cause in this case.

2. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in overruling defendants motion to dismiss filed herein, and in holding that the complainants were entitled to maintain this suit in this Court, and that the Court had jurisdiction thereof and over the parties herein, inasmuch as it does not appear from the complainants bill in equity herein filed that there was any interference with interstate shipments by the defendants.

3. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in overruling the demurrer filed at the close of the complainants' case.

4. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in overruling the demurrer of the defendants in the nature of a motion to dismiss offered at the close of all the evidence in ths case.

5. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting on the trial of the said cause incompetent, irrelevant and immaterial evidence offered by the complainants, and particularly, admitting it over the objection of the defendants.

The following evidence of John A. Meisel at page 120 of the stenographer's transcript was admitted:

Q. Could you give the Court approximately the amount of your loss? I don't mean to the dollar at all—
A. Since then, up to the present time?
Q. Yes. By reason of the fact that you were not allowed to ship in interstate commerce.

84 Mr. Leahy for defendants: That is objected to for this reason: That there is no evidence up to the present that there was any attempt on the part of these defendants to prevent interstate shipments whatever. On the contrary, the evidence shows directly opposite to that.

Objection overruled by the Court, to which ruling of the Court defendants by their counsel then and there, at the time duly excepted.

Also the following evidence of John A. Meisel, witness for the complainants on page 121 of the stenographer's transcript:

Q. What happened to prevent you from shipping your goods in interstate commerce?
A. The men going out on a strike.

Mr. Leahy for defendants: I ask that that answer be stricken out. The men had a just right to go out on a strike. They had a perfect right to go out.

Motion that the answer be stricken out was overruled by the Court, to which ruling of the Court, defendants, by their counsel, then and there, at the time, duly excepted.

Also the following evidence of James A. Quirk found at page 128 of the stenographer's transcript:—

Q. Have you had some trouble at your place since the strike?
A. Well, a good many that remained there were kept away from coming back the next few days after the strike was called.

Mr. Leahy for defendants: I ask that that answer be stricken out, because that is a conclusion.

Motion overruled and exceptions duly saved by defendants.

Also the following testimony of Harry A. Kolb found at page 134 of the stenographer's transcript:

Q. Can you tell us the money value of the orders that you had for shipment in interstate commerce at the time this strike was inaugurated?

A. We had some between five and six thousand dollars.

Q. Could you give the Court an estimate of your loss by reason of—

Mr. Leahy for defendants: I object to all this testimony for the reason I have made before, on the ground that the defendants are not liable for any loss or damage unless caused by illegal conduct on their part, and none has so far been shown.

Objection overruled by the Court and exceptions duly saved.

Also the following testimony of H. M. Wilson at page 141 of the stenographer's transcript:

84a Q. What was the amount—the money value of the orders that you had on hand on the tenth of April for shipment in interstate commerce?

A. I would say thirty-two or thirty-three thousand dollars.

Q. Are the orders coming in yet? A. Very few.

Q. Have you been able to fill those orders in interstate commerce?

This question was objected to by counsel for the defendants on the ground that it should be shown they actively interfered with interstate commerce before they could be said to be responsible for any damages that this company has suffered by reason of their quitting.

Objection overruled by the Court and exceptions duly saved.

Also the following evidence of H. M. Wilson found at page 142 of the stenographer's transcript:

"Q. What do you figure approximately your loss to be by reason of the fact that you have been unable to ship your goods in interstate commerce?

Mr. Leahy: Same objection. Which objection was overruled by the Court and exceptions duly saved.

Also the following evidence of Francis Hardy found at page 163 of the stenographer's transcript:

Q. What did those thre men, or any one of them, say to you?

A. They asked me if I was working down there at Murphy's and I toid them "yes." They said that I was scabbing and that they would fix me on Saturday night; they would take my money—

Mr. Leahy for defendants: I object to this testimony for the reason that it is not shown that these defendants had anything whatever to do with the stopping of this boy. The names are not given. We don't know whether they belonged to this Local or not. As far as we know now these men were absolute strangers and the defendants should not have to shoulder the responsibility of any statement made by an outsider.

The Court: I will hear it and determine it for you later. This is an equity suit.

To which ruling of the Court the defendants, by their counsel, then and there, at the time, duly excepted.

Also the following evidence of Henry Kelly found at pages 178 and 179 of the stenographer's transcript:

Q. What did he say to you, if anything?
A. He said: "Are you working at Murphy's."
Q. What did you say? A. I said: "Yes."
Q. What did he say in response to that?

This was objected to by defendants for the reason that the defendants were not bound by the statement that any-
85 body makes, except it is shown they are acting in collusion with them, and for the purpose of carrying out a conspiracy.

This was overruled by the Court and exceptions duly saved.

6. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in rejecting competent, and material evidence offered by the defendants.

7. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in holding that the complainants were entitled to maintain this suit inasmuch as no active interference with interstate shipments by the complainants have been offered by the complainants, and that the Court in the absence of such proof of active interference with the shipments of complainants' products had no jurisdiction over these defendants.

8. The action of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri in exercising jurisdiction over these defendants in the absence of any proof that there was any interference with interstate shipments of the complainants was a violation of the constitutional rights of these defendants as citizens of the United States and as citizens of the State of Missouri, and a usurpation of authority which properly belonged to the Courts of the State of Missouri.

9. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in all of its findings as mentioned in the said decree, and particularly in the finding contained in paragraph 2 of the said decree as follows:

"That the said complainants have finished and completed and ready for shipment large quantities of such finished products which have been ordered and manufactured and prepared for shipment in interstate commerce, as aforesaid"

there being no evidence in the case upon which to base
86 the said finding.

10. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in the finding in the said paragraph 2 of its said decree,

"That said defendants, prior to the institution of this suit, conspired, combined and confederated together to compel the said complainants to unionize their respective plants, factories and businesses, and to force said complainants to employ none but members in good standing of defendant Local Lodge 66 of the United Leather Workers International Union; or, failing in such demands, to harass, impede, injure and destroy the businesses of the said complainants and each of them"

for the reason that there was no evidence adduced on the trial of this cause to support the said finding, but on the contrary all evidence touching and concerning this issue was excluded by the Court at the said trial.

11. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in its finding in the same paragraph 2

"that, in pursuance of said conspiracy to injure the businesses of said complainants, and to restrain the receipt by

complainants of their raw materials and to impede the shipment by complainants of their finished products, all in interstate commerce, and upon the refusal by complainants to accede to the aforesaid demands of defendants, the said defendants, and their agents, associates and confederates, committed divers and sundry unlawful acts, as more fully set forth and charged in the bill of complaint and as mentioned in the opinion of the Court and as hereinafter enjoined"

"for the reason that there was no evidence in the trial of the case that there had been any attempt on the part of the defendants, or either of them, to restrain the receipt by complainants of their raw material, and to impede the shipment by complainants of their finished products, or of the commission of the acts alleged to be unlawful and therein set forth.

12. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding as set forth in said paragraph 2:

"That said complainants have suffered irreparable in-
87 jury [injury] and damages by reason of the said unlawful acts of the said defendants in this cause, and that further such irreparable injury, and damages will be suffered by said complainants and each of them, if relief be not afforded"

for the reason that the said defendants were not proven to have been guilty of any illegal acts nor were there any proofs of damages shown by the complainants.

13. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in enjoining the defendants as provided in the said decree in paragraph "A":—

"From compelling or inducing, by threat, intimidation, force, or abusive or violent or insulting language, or by force of numbers, any of the employees of any of the complainants to leave such service, or to fail or refuse to perform their duties as such employees; and from compelling or attempting to compel by such means patrons or intending patrons of said complainants not to patronize or deal with said complainants or any of them"

for the reason that there was not sufficient evidence upon which to base the said order.

14. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri

erred in enjoining the defendants as provided in the said decree in paragraph "B":—

"From interfering, by threats or violence of intimidation or violent or abusive language or by force of numbers, with persons seeking to make deliveries of goods or products to the places of business of any of said complainants, or hauling or taking merchandise therefrom,"

for the reason that there was not sufficient evidence upon which to base the said order.

15. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in enjoining the defendants as provided in the said decree in paragraph "C":—

"From interfering by threats, force or violence with any of the employees of any of said complainants for the purpose of compelling them, or any of them, to leave such employment,"

for the reason that there was not sufficient evidence upon which to base the said order.

88 16. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in enjoining the defendants as provided in the said decree in paragraph "D:"—

"From obstructing the entrances or the streets, alleys, approaches or premises adjacent to the places of business of any of the said complainants, or entering the said places of business, for the purpose of interfering with or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, force of numbers, violent or abusive language any of the employees of any of said complainants to refuse or fail to perform their duties as such.

for the reason that there was not sufficient evidence upon which to base the said order.

17. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in enjoining the defendants as provided in the said decree in paragraph "E:"—

"From picketing in front of the place of business of any of said complainants, or in the immediate vicinity thereof, for the purpose of interfering with or hindering or obstructing such business, or for the purpose of compell-

ing or inducing, by threats, intimidations, violence or abusive language or abusive persuasion any of the employees of any of said complainants to refuse or fail to perform their duties as such,"

for the reason that there was not sufficient evidence upon which to base the said order.

18. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in enjoining the defendants as provided in the said decree in paragraph "F:"—

"From trespassing upon or going upon the premises or place of business of any of said complainants for the purpose of interfering with the contracts of employment between such complainants and its employees, or for the purpose of inducing such employees to fail or refuse to perform their duties as such,"

for the reason that there was not sufficient evidence upon which to base the said order, and because same in contrary to law.

89 19. The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in enjoining the defendants as provided in the decree in paragraph "G:"—

"From assaulting, laying hands on or following any of the employees of any of said complainants when going to or leaving any of the places of business of any of said complainants, and from calling at the homes or places of residence of such employees, for the purpose, by threats, violence, intimidation, or force of numbers, or vile and insulting and threatening language directed against such employees or members of their families, of compelling or inducing such employees to fail or refuse to perform their duties as such,"

for the reason that there was not sufficient evidence upon which to base the said order.

20. That upon all the evidence and the pleadings the defendants were entitled to a decree dismissing the plaintiffs' bill.

(Signed) JOHN P. LEAHY

(Signed) LENA FRANK
Solicitors for Defendants.

Received Copy of the above this 20th day of January, 1921.

Signed MAT J. HOLLAND

(Indorsed: "Filed Jan. 20, 1921. W. W. Nall, Clerk.")

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90 (Order overruling motion of defendants for a rehearing on application for a permanent injunction.)

Now at this day comes the parties hereto by their respective solicitors, and submit to the court the motion of defendants for a hearing in this cause, upon due consideration whereof, the Court doth Order that said motion be overruled, to which ruling the said defendants except.

(January 24, 1921, C. B. Faris, Judge.)

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91 (Order extending time for filing statement of evidence).

On the 7th day of February, 1921, in open Court upon motion of the defendants in the above entitled cause except Robert Worsing, Henry Schnitz and Edward Schilling it is

Ordered by the Court that the time for presenting the statement of evidence be and the same is hereby extended to and including April 7, 1921.

(Signed) C. B. FARIS, Judge.

(Indorsed: "Filed Feb. 7, 1921. W. W. Nall, Clerk).

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92 Petition for Appeal.

To the Honorable C. B. Faris, Judge of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri:

The above-named defendants, United Leather Workers International Union, Local Lodge or Union No, 66, A. M.

Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Steve Zoeller, Tony Sanson, Annie Steckner, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, being all the defendants in the above-entitled cause, except Edward Schilling, Henry Schnitz and Robert Worsing, against whom the Bill of Complaint was dismissed by the Court and who were excluded from the designation "defendants," as employed in the decree therein rendered, feeling aggreived by the order or decree therein of injunction of this Court rendered and entered in the above-entitled cause on the 15th day of January, 1921, hereby appeal from the said decree to the United States Circuit Court of Appeals for the Eighth District, for the reasons specified in the Assignment of Errors herewith filed in this cause, and pray that this appeal be allowed, and that a transcript of the record and porceedings and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Eighth District under the rules of such Court in such cases made and provided.

93

And you petitioners further pray that a proper order relating to the required security for costs to be required of them be made.

(Signed) JOHN P. LEAHY
(Signed) LENA FRANK
Solicitors for Defendants.

United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmeirer, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kints, Stephen Wilheim, Walter Deschant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Benjamin Schnitz, Theo, Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo

Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, being all the defendants except Edward Schilling, Henry Schnitz and Robt. Worsing.

(Indorsed: "Filed Feb. 7 1921, W. W. Nall, Clerk.")

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94 (Order allowing Appeal, etc.)

On motion of John P. Leahy and Lena Frank, Solicitors and counsel for all of the above-named defendants except Robert Worsing, Henry Schnitz and Edward Schilling, said motion being made in open Court on this day and at the same term at which the injunction or decree of this Court was entered herein on the 15th day of January, 1921, making a temporary injunction theretofore granted final, and decreeing a permanent injunction against the defendants, and within thirty days after the said order, injunction or decree of this Court was entered herein, it is hereby ordered that the appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the said injunction, order or decree heretofore filed and entered herein be, and the same is hereby allowed, and that a certified transcript of the record, testimony exhibits, stipulation, and all proceedings be forthwith transmitted to the said United States Circuit Court of Appeals for the Eighth Circuit and that all further proceedings in the said cause in this Court be stayed pending the determination of this appeal.

95 It Is Further Ordered that the Bond on Appeal be fixed at the sum of One Thousand Dollars ($1000.00) with sureties to be approved by this Court.

And also on this day come the said defendants except Robert Worsing, Henry Schnitz and Edward Schilling, and present their Bond on Appeal in the sum of $1000.00, and the Court having examined the said bond and the sureties thereon, it is ordered by the Court that the said bond be and the same is hereby approved, both as to sufficiency and form.

Entered in open Court this 7th day of February, 1921.

(Signed) C. B. FARIS
Judge.

(Endorsed: "Filed Feb. 7, 1921, W. W. Nall, Clerk.")

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96 Assignment of Errors.

Now come United Leather Workers International Union, Local Lodge or Union, No. 66, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reu-
97 ben, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, being all the defendants in the above-entitled cause, except Edward Schilling, Henry Schnitz and Robert Worsing, against whom the Bill of Complaint was dismissed by the Court and who were excluded from the designation "defendants", as employed in the decree therein rendered, and file the following Assignment of Errors, upon which they will rely upon the prosecution of their appeal in the above-entitled cause from the decree made and rendered and entered by this Honorable Court on the 15th day of January, 1921:—

1. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in entering its order overruling and denying defendants' return to the order to show cause why a temporary injunction should not be issued in this case.

2. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in entering its order overruling defendants' motion to dismiss the complainants' bill herein filed and in holding that the complainants were entitled to maintain this suit in this Court, and that this Court had jurisdiction thereof and over the defendants therein, inasmuch as it does not appear in the complainants' bill herein filed that there was any averment of interference with interstate shipments by defendants.

98 3. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in overruling defendants' Motion to Dismiss the complainants bill filed at the close of complainants' case.

4. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in overruling defendants' Motion to Dismiss Bill of Complaint offered at the close of all the evidence in the case.

5. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in granting a Decree of Temporary Injunction against the defendants in this case, and in all the findings and orders contained in the said temporary injunction.

6. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in decreeing that the temporary injunction heretofore granted in the said cause be made permanent.

7. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri in said decree of permanent injunction, erred in finding and decreeing that the complainants and each of them have accepted orders for finished products from customers in other states, who are demanding that such orders be fulfilled, and theratening cancellation of such orders unless shipments be made promptly, for the reason that there was no evidence offered in said cause upon which to base the said decree and finding and the said Court was without jurisdiction to render and make the same.

8. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding and decreeing in its said Decree of
99 Permanent Injunction that the said complainants have finished and completed and ready for shipment large quantities of such finished products which have been ordered, manufactured and prepared for shipment in Interstate Commerce as aforesaid, for the reason that there was no evidence upon which to base the said decree and finding, and the said Court was without jurisdiction to render and make the same.

9. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding and decreeing that the said complainants and each of them employed a large number of persons, both men and girls, many of which employes are young and timid and easily frightened, for the reason that there was no sufficient evidence upon which to base the said decree and finding, and the said Court was without jurisdiction to render and make the same.

10. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding and decreeing in its said permanent decree of Injunction that the said defendants prior to the institution of this suit conspired, combined and confederated together to compel said complainants to unionize their respective plants, factories and businesses, and to force said complainants to employ none but members in good standing of defendant Local Lodge or Union No. 66 of the United Leather Workers International Union; or failing in such demands, to harass, impede, injure and destroy the business of the said complainants and each of them, for the reason that there was no evidence upon which to base the said decree and finding, all the evidence touching the origin and nature of the controversy between the complainants and the defendants being expressly excluded by the Court in the trial of the said cause, and there being no evidence whatever that the defendants and either of them had entered into any such conspiracy.

11. That the District Court of the United States for
100 the Eastern Division of the Eastern Judicial District of Missouri erred in finding and decreeing in its said order for permanent injunction against the defendants herein that in pursuance of the alleged conspiracy to injure the businesses of the complainants and to restrain the receipt by them of their raw materials, and to impede, the shipment of complainants of their finished products, all in interstate commerce, and that upon the refusal by complainants to accede to the aforesaid demands of defendants, that the said defendants, their agents, associates and confederates committed divers and sundry unlawful acts, as more fully set forth and charged in the Bill of Complaint, and as mentioned in the opinion of the Court and as hereinafter enjoined in the said order," for the reason that there was no sufficient evidence upon which to base the said decree, and finding, and the said Court was without jurisdiction to render and make the same.

12. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding and decreeing in its said Decree of Permanent Injunction that "the said complainants had suffered irreparable injury and damage by reason of the unlawful acts charged to have been committed by the defendants in this cause, and that such irreparable injury and damages would be suffered by complainants and each of them if relief be not afforded by the entry of this decree," for the reason that there was no sufficient evidence offered in the said cause to

show that the complainants, or either of them had suffered any injury or damage by reason of any acts of the defendants in this cause.

13. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri in its said decree making the temporary injunction theretofore issued permanent erred in enjoining the defendants from compelling or inducing, by threat, intimida-
101 tion, force, or abusive or violent or insulting language, or by force of numbers, any of the employees of any of the complainants to leave such service, or to fail or refuse to perform their duties as such employees; and from compelling or attempting to compel, by such means, patrons or intending patrons of said complainants not to patronize or deal with said complainants or any of them" for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to renrender and make the same.

14. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its said decree making the temporary injunction theretofore issued permanent, erred in enjoining the defendants "From interfering, by threats or violence or intimidation, or violent or abusive language, or by force of numbers, with persons seeking to make deliveries of goods of products to the places of business of any of said complainants, or hauling or taking merchandise therefrom" for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to render and make the same.

15. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its said decree making the temporary injunction theretofore issued permanent, erred in enjoining the defendants "From interfering, by threats, force or violence, with any of the employees of any of said complainants for the purpose of compelling them, or any of them, to leave such employment", for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to render and make the same.

16. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri,

in its said decree making the temporary injunction
102 theretofore issued permanent, erred in enjoining the defendants "From obstructing the entrances or the streets, alleys, approaches or premises adjacent to the places of business of any of the said complainants, or entering the said places of buisness, for the purpose of interfering with or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, force of numbers, violent or abusive language any of the employees of any of said complainants to refuse or fail to perform their duties as such", for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to render and make the same.

17. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its said decree making the temporary injunction theretofore issued permanent, erred in enjoining the defendants "From picketing in front of the place of business of any of said complainants, or in the immediate vicinity thereof, for the purpose of interfering with or hindering or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, violence or abusive language or abusive persuasion, any of the employees of any of said complainants to refuse or fail to perform their duties as such", for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to render and make the same.

18. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its said decree making the temporary injunction theretofore issued permanent, erred in enjoining the defendants "From trespassing upon or going upon the premises or place of business of any of said complainants for the purpose of interfering with the contracts of employment between such complainant and its employees, or for the purpose of inducing such employees to fail or refuse to perform
103 their duties as such" for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to render and make the same.

19. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its said decree making the temporary injunction theretofore issued permanent, erred in enjoining the defend-

ants "From assaulting, laying hands on or following any of the employees of any of said complainants, when going to or leaving any of the places of business of any of said complainants, and from calling at the homes or places of residence of such employees, for the purpose, by threats, violence, intimidation, or force of numbers, or vile and insulting and threatening language directed against such employees or members of their families, of compelling or inducing such employees to fail or refuse to perform their duties as such," for the reason that there was not sufficient evidence upon which to base the said injunction, and the said Court was without jurisdiction to render and make the same.

20. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its said decree making the temporary [injunc-] theretofore issued permanent, erred in ordering "that the said cause be referred to Eustace C. Wheeler, Esquire, as Special Master, appointing and authorizing and directing the said Master to make inquiry, and ascertain and report to the Court his findings as to the damages sustained by the said complainants and each of them by reason of the unlawful and wrongful acts and conduct of the said defendants as therein stated and adjudged' for the reason that there was no proof offered in evidence that the defendants were guilty if unlawful or wilful acts or conduct which caused said damages, as alleged in said decree.

104 21. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in its decree making the temporary injunction theretofore issued against the defendants permanent, erred in its findings in favor of the complainants in the issuing and granting of said injunction, for the reason that the complainants were not entitled to maintain this suit inasmuch, as no active interference on the part of the defendants or either of them was shown by the evidence to have been exercised in the interstate shipments by the complainants, and that the said Court, in the absence of such proof of active interference on the part of the defendants with the shipments of complainants' products had no jurisdiction over these defendants, and was without power to issue the said decree of injunction.

22. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in assuming to exercise jurisdiction over these defendants, there being no proof offered in the trial of the said

cause that there was any interference with interstate shipments of the complainants on the part of these defendants, and decreeing the parmenent injunction against them for the reason that the said finding and decree was a violation of the constitutional rights of these defendants as citizens of the United States and as citizens of the State of Missouri, and a usurpation of authority which properly belonged to the Courts of the State of Missouri.

23. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in not finding in favor of the defendants and dismissing the complainants' bill because of the want of equity and jurisdiction in the Court to determine same.

24. That the District Court of the United States for
105 the Eastern Division of the Eastern Judicial District of Missouri erred in admitting on the trial of said cause incompetent, irrelevant and immaterial evidence offered by the complainants over the objection of the defendants.

25. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in making the following finding of facts herein:

"That after the calling of the strike and until the temporary restraining order was issued herein the several shops of plaintiffs were picketed by striking employes; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs, or some of them. During this picketing many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employes, and divers employes who continued in the employment of plaintiffs, vile and opprobrious names; that there were instances of domiciliary visits accompanied by threats, and various other things of a like nature too numerous to mention, and that the method used by the defendants in preventing the plaintiffs from obtaining other workmen have been, as stated in numerous proven instances, unpeaceful and unlawful."

26. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in making the following finding of facts:

"Barring the question of jurisdiction and the existence of a conspiracy the plaintiffs are unquestionably entitled to the relief by injunction for which they prayed."

106 27. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in its finding that the Circuit Court of Appeals for the Eighth Circuit in the case of Dowd vs. United Mine Workers et al. reported in 258 Fed. Rep. 829, announces a rule that "interference with the production and manufacture of goods prior to transportation of same constitutes a violation of Interstate Commerce Laws of the United States and particularly the Sherman Act."

28. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting on the trial of the said cause the following incompetent, irrelevant and immaterial evidence offered by the complainants, and overruling defendants' exception to same, to-wit:

The testimony of John A. Meisel, one of the witnesess for the complainant Herkert & Meisel Trunk Company, relating to the loss alleged to be suffered by the said complainant, by reason of the fact, as claimed by it, that it was not allowed to ship goods in interstate commerce"

and in not sustaining defendants' exception, being exception No. 1, and directed to the said erroneous testimony.

29. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting over the objection of the defendants incompetent, irrelevant and immaterial evidence offered by the complainants, being that of the said witness John A. Meisel, relating to the question asked as to "what prevented him from shipping the goods of the complainant Herkert & Meisel in interstate commerce, and his answer that the men going out on strike" and in overruling motion of the defendants to strike out the said question and answer, and in not sustaining defendant's exception, being exception No. 2, and directed to the said erroneous testimony.

107 30. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting the following incompetent, irrevelant and immaterial evidence offered by the complainants over the objection of the defendants, relating to the question asked of James A. Quirk, one of the witnesses for the com-

plainant James A. Quirk Trunk Company, in which said witness was asked "if he had some trouble at his place since the strike" and answer "that a good many that remained there were kept from coming back the next few days after the strike was called" and in overruling the motion of the defendants that the said question and answer should be stricken out, and in not sustaining defendants' exception, being exception No. 3, and directed to the said erroneous testimony.

31. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting the following incompetent, irrelevant and immaterial testimony offered by the complainants, being that of Harry A. Kolb, one of the witnesses for the complainant H. A. Kolb Trunk & Case Company, over the objection of the said defendants, relating to the money value of the orders that the said complainant had for shipment in interstate commerce at the time the strike was inaugurated and the answer thereto to the effect that these orders amounted to five or six thousand dollars, and in overruling the exception made by the defendants to same, being exception No. 4, and directed to the said erroneous testimony.

32. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting over the objection of the defendants the following incompetent, irrelevant and immaterial testimony, being that of H. M. Wilson, a witness on behalf of the
108 complainant Stability Leather Goods Manufacturing Company, relating to the money value of the orders his company had for shipment in interstate commerce on the 10th of April, and the answer that "the said company had thirty-two to thirty-three thousand dollars", and in overruling the exception made by the defendants to same, being exception No. 5, and directed to the said erroneous testimony.

33. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting over the objection of the defendants the following immaterial, irrelevant and incompetent, testimony, being that of the said H. M. Wilson, relating to the approximate loss of his said company by reason of the fact that it had been unable to ship its goods in interstate commerce, and in overuling the objection to same, being exception No. 6, and directed to the said erroneous testimony.

34. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri

erred in admitting over the objection of the defendants the following incompetent, irrelevant and immaterial testimony, being that of Francis Hardy, a witness for the complainant P. C. Murphy Trunk Company, relating to statements alleged to have been made to her by three men, and the answer of said witness that "the said men had asked him if he was working at Murphy's" and he told them "Yes", and that they said "he was scabbing and they would fix him on Saturday night," and in overruling the objection of the defendants to the said testimony, and in not sustaining the exception of the defendants thereto, being exception No. 7, and directed to the said erroneous testimony.

109 35. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in admitting over the objection of the defendants the following immaterial, irrelevent and incompetent testimony, being that of Henry Kelly, relating to statements alleged to have been made by an unknown person to him in which he was asked "if he was working at Murphy's" and what he said in response to the said question, and in not sustaining and in overruling the exception of defendants being exception No. 8, and directed to the said erroneous testimony.

36. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in not dismissing the complainants' Bill of Complaint as to all of the issues involved for lack of equity as to any of said issues that defendants costs be taxed against the complainants.

37. That the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in decreeing the said injunction against the defendants, the same being a violation of their constitutional rights as citizens of the State of Missouri, and as citizens of the United States of America.

38. Wherefore, the said defendants pray that the said decree of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri may be reversed and set aside and held for naught, and that the said Court be directed to dismiss the Bill of Complaint at the

complainant's costs, and for such other and further
110 orders as in justice the defendants may be entitled to.

Dated this .....day of February, 1921.

(signed) JOHN P. LEAHY

(signed) LENA FRANK

Solicitors for Defendants

United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, Charles Morgan, John Smith, Michael Little, John Lechner, Paul Berry, Ambrose Knitz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton J. Perry, John Remstedt, Charles Reuben, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo, Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, being all of the defendants in the above-entitled cause except Edward Schilling, Henry Schnitz and Robt. Worsing.

(Indorsed: Filed Feb 7 1921 W. W. Nall, Clerk.)

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111 (Bond on Appeal.)

Know all men by these presents that we, United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al. Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fisher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob Anton, Pauley, Leo Pauley, Steve Zoeller, Tony, San-

son, Annie Stecher, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, being all the defendants except Edward Schilling, Henry Schnitz and Robert Worsing, as principals, and the Massachusetts Bonding and Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and authorized to sign bonds as surety, as surety, are held and firmly bound unto the complainants Herkert & Meisel Trunk Company, a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Company, a corporation, Stability Leather Goods Manufacturing Company, a corporation, and H. A. Kolb Trunk & Case Company, a corporation, in the sum of one Thousand Dollars ($1000.00), lawful money of the United States, to be paid to them and their respective executors, administrators and successors, to which payment well and truly made we bind ourselves, and each of us, jointly and severally, and each of our successors and assigns by these presents.

Sealed with our seal and dated this 4th day of February, 1921.

Whereas the above-named defendants have prayed for and obtained an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the decree of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri in the above-entitled cause rendered on the 15th day of January, 1921.

Now, therefore, the condition of this obligation is such:—

That if the above-named defendants shall prosecute their said appeal to effect and shall answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John

Remstedt, Charles Reuben, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, and Geo. Wenk, being all of the defendants except Edward Schilling, Henry Schnitz and Robert Worsing.

(signed) JOHN P. LEAHY
Attorney in Fact.

MASSACHUSETTS BONDING & INSURANCE CO.

(signed) By L. J. Nichols
Attorney in fact. (Seal)

Approved

(signed) C. B. Faris, D. J.

(Indorsed: "Filed Feb 7 1921 W W Nall, Clerk.")

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113 (Order as to reproduction of entire testimony taken at hearing for Temporary Injunction.)

On motion of the defendants herein except Robert Worsing, Edward Schilling and Henry Schnitz, against whom complainants' bill was dismissed, and by and with the consent of the complainants in this cause, and it being in the opinion of the Court essential to a proper determination of the said cause by the United States Circuit Court of Appeals for the Eighth Circuit, It is hereby ordered that the entire testimony of the witnesses in this cause taken at the hearing for the temporary injunction and submitted to this Court on the final hearing of the said cause, as same is contained in the stenographic transcript, shall be reproduced in the exact words of the interrogators and witnesses, the same being the lieu of the narrative form provided for in Rule 10 of the said United States Circuit Court of Appeals.

(signed) C. B. FARIS
Judge.

(Indorsed: "Filed Feb 19 1921 W. W. Nall, Clerk.")

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114 (Transcript of the evidence presented, approved and filed)

Now at this day come defendants, by solicitor, and present a transcript of the evidence upon the final hearing in this cause, which transcript is now approved by the Judge and filed. (March 15, 1921. C. B. Faris, Judge.)

115 (Statement of Evidence.)

Be it remembered, that the following proceedings were had in the above-entitled cause before the Hon Charles B. Faris, Judge of the United States District Court within and for the District aforesaid, upon May 22, and June 1 and 2, 1920, during the March Term of said Court.

Appearances:

Mr. Mat J. Holland, for plaintiffs,

Mr. John P. Leahy and

Miss Lena Frank, for Defendants.

116 St. Louis, May 22, 1920.

The following proceedings were had:

Mr. Holland: I went to state briefly what is before your Honor's Court at this time. This is an injunction suit brought by a number of trunk manufacturers—

The Court: I am familiar with all that.

Mr. Holland: Has your Honor read the petition in this case?

The Court: Only casually. I read it over when it was presented to me.

Mr. Holland: I think it is not necessary for me to state to you what we expect to prove. I will supply you with a copy of the bill and put my evidence on immediately, so as to facilitate matters.

Mr. Leahy: In the return that we filed, of course, we take the position that the bill of complaint does not set out facts sufficient to constitute a cause of action for bringing the case, within the scope of the Clayton law.

The Court: Very well. I take it I can determine that.

Thereupon the plaintiffs, to sustain the issues in their behalf, introduced the following evidence:

117 FRANCES LEO MURPHY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination.

By Mr. Holland:

Q. What is your name?
A. Frances Leo Murphy.
Q. What is your business?
A. Secretary and manager of the P. C. Murphy Trunk Company.
Q. Is that company a corporation?
A. Yes, sir.
Q. Where has it its office and principal place of business?
A. At 13th and Papin Streets, St. Louis.
Q. How long has your concern been in business?
A. We were established in 1860. I believe my father started business 1854.
Q. That is almost seventy years, is it?
A. Well, what ever it is.
Q. Could you give the Court an idea of how much money is invested in that business at the present time?
A. Upwards of about a half million.
Q. And how much business do you do annually, approximately?
A. We did approximately a million dollars last year.
Q. Now, I will ask you, Mr. Murphy, if you have active control and supervision over your place down there?
A. Yes, sir.
Q. And you did have control and management of that concern on or about the first day of April, of this year?
A. Yes, sir.
Q. About how many men did you have employed at your factory at that time?
A. I think it was about two hundred and twenty-five.
118 Q. On the 10th of April did anything unusual happen there regarding labor troubles, or a strike, or a walk-out?
A. All the men walked out.
Q. Did you have at that time of that walk-out very many orders on file?
A. Yes, quite a lot.
Q. What was the value of those orders, approximately?

A. Why, I would judge it will amount to seventy-five thousand or more.

Q. How much of the value or amount of those orders, in the aggregate, was to be shipped in interstate commerce?

A. Pretty near all of it.

Q. Pretty near all of it was to be shipped to other states outside of Missouri. Now, on the 10th day of April when this walk-out occured, as you say, what time of the day did that occur?

A. Why, it was Saturday. They got their pay and walked out.

Q. Did they proceed to do any thing else outside of the building or elsewhere, that you know of, on Saturday?

A. No, not on Saturday.

Q. Now, what happened after that?

A. They started picketing the plant Monday morning.

Q. Where did they stand with reference to the plant when they picketed, as you say?

A. At the corner.

Q. At the corner where?

A. 13th and Papin.

Q. That is where, at your building there?

A. It is within about fifteen feet of the entrance.

Q. How were the other corners, was anybody stand-
119 ing on the other corners, that you knew to be picketing your factory?

Mr. Leahy: I object to this testimony for the reason that this suit is aimed at these particular defendants who are mentioned here. If other persons picketed, I take it that they wouldn't be responsible for any actions on the part of those people. We have a large number of defendants, of parties that have been made defendants in this suit, and these defendants are not bound by the acts of any other persons; and unless the evidence shows that these defendants themselves were actually engaged in the acts claimed to be unlawful, I take it that this evidence would be utterly immaterial.

The Court: Of course it must be connected up; these defendants must be shown to have been connected with it in some way, either by virtue of a conspiracy, or something of that sort. Of course, counsel cannot offer all his testimony in a moment. I will hear it and consider it or not after I find whether it has been connected in the proper way.

Mr. Holland: I will state that I am fortified with a decision along that line, your Honor.

Q. Do you know a man named Charles Kaysing?

A. Yes, sir.
Q. Do you know a man named H. Ehlenbeck?
A. Yes, sir.
Q. Do you know William Bruns?
A. Yes.
Q. Do you know Louis George?
A. Yes.
Q. Do you know H. Laskowitz?
A. Yes, sir.
Q. Nick Pauls?
A. Yes, sir.
Q. William Wachter?
A. Yes, sir.
Q. Louis Joyce?
120 A. Yes, sir.
Q. John Smith?
A. Yes, sir.
Q. L. Berg?
A. Yes, sir.
Q. A. Oglesby?
A. Yes.
Q. M. Rehan?
A. Yes.
Q. William Hoffman?
A. Yes.
Q. Do you know a man named Sanders?
A. Yes, sir.
Q. Do you know his first name, Mr. Murphy?
A. No. There is two Sanders work with us.
Q. Do you know F. Stein?
A. A. T. Stein.
Q. What is his name, T. is it?
A. Yes.
Q. R. Klyberger?
A. Yes.
Q. G. Feldkamp?
A. Yes.
Q. M. Litke?
A. Yes.
Q. Al. Schlegel?
A. Yes, sir.
Q. Anna Howard, a woman?
A. She worked for us, but I don't know her.
Q. Do you know a man named Reuter?
A. Yes.
Q. Do you know what he does?

A. He is a leather cutter for the Stability Leather Company.

Q. Do you know whether or not Reuter belongs to the United Leather Workers International Union Local Lodge or Union No. 66?

Mr. Leahy: (To the witness) Of your own knowledge.

The Witness: How?

Mr. Leahy: Of your own knowledge.

Mr. Holland: I am asking for that.

The Witness: Yes. He stated that he did.

Q. Do you know A. L. Birkenmeier, whether he is a member of that union?

A. Why, yes.

121 Q. In what capacity?

A. Business agent, I believe.

Q. You know he is the business agent, don't you?

A. From correspondence I have got from him.

Q. Now, do you know a man named Edward Schilling?

A. Yes.

Q. Do you know what his business is?

A. I believe he is an organizer and vice president.

Q. Of the United Leather Workers Organization?

A. United Leather Workers.

Q. Local Lodge or Union No. 66?

A. Yes.

Q. Now, the names of those that I have read off to you, commencing with Charles Kaysing, Ehlenbeck, and so on down the line, have you seen those men, or any of them, doing picket duty in the vicinity adjacent to or around your factory where your trunks are manufactured?

A. All of them.

Q. How many of them have you seen at any one time in the vicinity of your factory?

A. I have seen as high as from three to—from one man up to about sixteen.

Q. At what time of the day would that mass picketing, or picketing of a large number of men, namely sixteen, at what time would that usually occur?

A. Well, they would start coming around the plant anywhere from a quarter or twenty minutes after six and be around pretty near all day.

Q. At what time does your factory take up in the morning?

A. They start to come in there from six-twenty to quarter to seven.

Q. You say that is about the time that those pickets would congregate?

A. They started congregating fifteen or twenty min-
122 utes past six.

Q. How about the afternoon or evening; what time do you let out?

A. Well, we let out for lunch at twelve. There was quite a number of them at the time they go to lunch and back.

Q. They would come at twelve o'clock, again?

A. Yes.

Q. How about quitting time in the evening?

A. They would be congregated then.

Q. How large would the crowd be then, usually?

A. Well, they would vary.

Q. What would you say, approximately, was the maximum number of men?

Mr. Leahy: I object to that kind of an examination, if the Court please, because I think it ought to be shown the specific dates on which the picketing was done, and the number of pickets that were present upon these dates. That would be only fair to us.

The Court: You may get at that matter in the cross examination, Mr. Leahy.

Mr. Leahy: In addition to that, most of the parties who have been named, here, I think, with the exception of one, are not defendants in this case, haven't been brought in as defendants. I take it that this testimony will be admitted subject to the exception that I have already made, if your Honor please? I don't desire to—

The Court: Oh, yes.

Mr. Holland: We have, under the law, I think, until the final adjudication of this case; we have until then to bring
these men in, if we want to, and they were all served
123 with notice, with your Honor's order—

Mr. Leahy: That is not the point I am referring to. I am representing the men that have been brought in here now, and, of course, no evidence of what any other person does or says can effect the status of these defendants before the Court except they be, as your Honor indicated, connected up with it in some way, by conspiracy or otherwise.

The Court: They will have to be connected up with some sort of conspiracy of course, but the case is very, very young.

Mr. Leahy: I don't want to take up the time of the Court unnecessarily, but I want my record shall be made and taken as made to all of this testimony until the matter is connected, and then at that time, if it is not connected—

The Court: It will be so considered. Proceed.

Mr. Holland: Do you know Al Kaysing—is that his name?

A. Charles Kaysing.

Q. You know him, do you?

A. Yes.

Q. Do you know what office, if any, he holds with the union?

A. I don't know what office he holds now. He is one of the Executive Committee, I believe.

Q. How often have you seen him there conferring with thost pickets, since the 10th of April?

A. I have seen him there pretty near every day.

Q. How often have you seen Birkenmeier there?

A. I believe he would be around at our place every Monday, but he didn't do any picketing.

124 Q. He just came around there every Monday or so?

A. They had a meeting hall at Chouteau Avenue, and I would see him.

Q. But Kaysing was there practically all the time, morning, noon and night?

A. No, not morning, noon and night, but he was there pretty near every day; he would be around for an hour or so.

Q. Your factory is situated at 13th and Papin, is it not?

A. Yes, sir.

Q. You call it Papin? A. Yes.

Q. In order to get to your factory, people coming from the south have to come past the corner of 14th and Chouteau, or 13th and Chouteau?

A. No matter which way you come you would have to pass 13th and Chouteau, except you go through the lot from the 12th Street Viaduct, or the 18th Street—

Q. What has been the conduct of those men around there, those whom you knew and those whom you did not know, toward your employes and people seeking employment with you since the 10th day of April, since the day of the walk-out?

A. Well, what they have done over there only came in reports to me, they were molested, that is, stopped—

Mr. Leahy: That is objected to in the way of testimony on the part of this witness, as to what anybody else—

Mr. Holland: I am asking for the results on his business.

The Court: Are you asking about reports that have come to him?

Mr. Holland: No; I don't want to put it that way. I want to find out, your Honor, what is the result of this continual espionage and the result of the activities of that large number of men around and adjacent to his factory, on his
125 business.

The Court: You may ask that. I didn't so under stand the question.

Mr. Leahy: That was not the question.

The Court: You may ask that.

Mr. Holland: Q. What was the result on your business of those men standing there and picketing your place, as you have testified?

A. Why, they prevented men from coming to work.

Q. Were you able to get your goods out?

A. Not anywhere near it.

Q. Were you unable to ship your goods to interstate commerce?

A. Certainly.

Q. What do you attribute your failure to turn out goods—

Mr. Leahy: I object to that question. That is asking for a mere conclusion. I want him to state the facts.

Mr. Holland: He stated there was a large number of men there. I want to know if he knows whether those men deterred people from coming to work for him.

Mr. Leahy: That can only be proved by the testimony of the men that were deterred.

Mr. Holland: I understood Mr. Leahy to say that he wishes to expedite this trial as much as possible—

Mr. Leahy: Yes, I do, but I don't want improper evidence.

Mr. Holland: I can prove it, of course. I alleged that this man has lost o lot of money, and I want to know if it is by reason of this mass picketing.

The Court: His answer is that they are unable to ship goods in interstate commerce because of lack of hands.

126 That, of course, is no ground for injunction, standing alone.

Mr. Holland: Q. To what do you attribute the lack of hands to get your goods out?

Mr. Leahy: I object to that, if your Honor please, because that question clearly calls for a conclusion.

The Court: Yes; you had better state the facts.

Mr. Holland: Q. Why can't you get help and turn out these goods?

A. Most everybody applying for work has been stopped.

Mr. Leahy: I ask that that answer be stricken out. If the witness knows of anybody being stopped, who the parties are, he ought to say so. If he is merely stating what somebody else told him that is highly improper, because that is hearsay. What he has seen himself that is another question, but I don't understand him to say that he has seen anybody doing an illegal act.

Mr. Holland: Did you ever see anybody stopped since the 10th day of April?

A. I saw two particular instances where they were stopped.

Q. You did?

A. Yes, sir.

Q. You saw yourself?

A. And then there was three Italians that worked one day and came back the next day to get their money, and said the reason—

Mr. Leahy: I object to what these men said.

Mr. Holland: Q. The three Italians quit you, didn't they?

A. Yes.

Q. Quit your employ?

A. Yes.

Q. And several men quit your employ, do I understand your evidence to be?

127 Mr. Leahy: That is objected to as leading, it is not right.

Mr. Holland: I beg the Court's pardon, and your pardon, too, sir.

The Witness: Shall I answer that?

The Court: The question was leading. Ask it in a way that is not leading.

Mr. Holland: All right. This is subject to the objection, again.

Q. You say several men have quit your employ since that picket line has been on there?

Mr. Leahy: I object to that again, if the Court please, for the reason that it is not shown that the reason they quit the employ was because of anything that was said or done on the outside by any one of these defendants, or anyone connected with them.

The Court: That is true, but it may be that he may show it before he gets through. I am afraid you are insisting upon brother Holland presenting his case all in one sentence. He cannot do that.

Mr. Leahy: As it occurs to me—I want to expedite the business of this Court, but I don't want to let in improper testimony. If there was any act of violence done on the outside I think that ought to be shown by the witness to whom this violence was done.

The Court: Or by somebody who saw it.

Mr. Leahy: Or by somebody who saw it, precisely.

The Court: This is an equity case, gentlemen, and I will hear it. I will be corrected by an appellate court solely if I refuse to admit evidence. If I admit evidence which ought not to come in the Court will say with charity that I
128 didn't consider that inadmissible when I came to make up my opinion, so it is safer to let the evidence in.

Mr. Leahy: Let it in subject to my objection.

Mr. Holland: Q. You say that you saw two men stop, yourself? A. I said I saw two instances.

Q. Do you know who stopped them; do you know the names of the men who stopped them?

A. L. Berg stopped two men from coming in there.

Mr. Leahy: Q. What was his name?

A. L. Berg, and the other was a man named Altrop was stopped by Nic Pauls and Louis George on two mornings.

Q. Did you witness that yourself? A. Yes

Q. What is the other man's name? A. Louis George.

Q. Were those pickets down there with Kaysing?
A. They were up on 14th street.
Q. Fourteenth?
A. Fourteenth, south of Papin, between Papin and Chouteau.
Q. How far is that distant from your factory?
[—] Well, our factory runs from Thirteenth to Fourteenth, and the Fourteenth Street side is occupied by Maul. They were on the curbstone of the Maul property.

Mr. Holland: I don't want you to give the exact amount, because I don't suppose you know, Mr. Murphy—unless Mr. Leahy wants to find out—but what do you estimate you lost in money by reason of this strike since the inauguration of this strike?

Mr. Leahy: I object to that method of ascertaining the loss. I don't see how the witness can state definitely.

129 Mr. Holland: I ask it as a formal question, because if we insist upon an accounting, I suppose the Court may possibly find another method of arriving at it. I cannot prove that unless we take the Court's time and—

The Court: He may make an estimate.

A. It would be pretty hard to make an estimate now, with prices dropping. I don't know what we would lose with the merchandise we have on hand. I don't know whether we can sell it.

Mr. Holland: You can give some idea.

A. In actual loss in those weeks, that is profit—
A. Yes.
A. I would say we have lost approximately fifteen thousand dollars.

Mr. Holland: That is all for the present, Mr. Murphy. (To the Court) I may have to recall Mr. Murphy sometime again.

Cross-Examination

By Mr. Leahy:
Q. I didn't quite catch your answer to the question as to what position you held. A. Secretary and manager.
Q. Of the P. C. Murphy— A. Trunk Company.
Q. And your factory, I understand, is located at Thirteenth and Papin? A. Thirteenth and Papin.
Q. It is quite a large factory up there, is it not? A. Yes.

Q. And it covers the entire block?
A. A half block, the north half.
Q. The north half?
A. From Thirteenth to Fourteenth.
Q. What is its total frontage?
A. It would be pretty hard—covers the entire north
130 half block of Papin to the alley.
Q. Well, approximately, in feet?
A. I couldn't give you that.
Q. Is it many hundred feet, say four or five hundred feet?
A. No, I don't think so.
Q. Three hundred? A. It might be.
Q. Now, does your plant front on Papin Street, the factory?
A. We have entrances on both sides, that is, on—
Q. You have an entrance at the rear?
A. We use the shipping room, there is an entrance—
Q. That goes toward Choteau Avenue?
A. That goes towards Choteau Avenue.
Q. But the main entrance is on Papin Street?
A. The office entrance is on Papin Street.
Q. These men that you saw congregating around your plant, were they on Papin Street?
A. They were on Papin Street. They stood on the northwest corner, right at the corner of our place, for a while until the restraining order was gotten out. They stood across the street. They stood across Fourteenth Street, both sides, and on Thirteenth and Chouteau—the only egress to the street car, outside of the Twelfth Street viaduct, and the last couple of weeks they even stopped on the viaduct.
Q. I am asking you what took place immediately after the strike, after the men quit your employment, after they went out: Did they start in to picket on the following day?
A. The following day was Sundey.
Q. The day after, then, Monday?
A. Monday morning.
131 Q. How many pickets were in line on Monday morning?
A. I didn't pay much attention outside of right at our corner, the first Monday; I think it was about three or four, right at the corner of our office.
Q. Now, were these three or four men standing at the alley?
A. Standing right at the corner of our office, within fifteen feet of the entrance to our office.

Q. Your factory at Papin Street runs east and west, does it not? A. Yes.

Q. And your office is at the east side of the factory, is that correct, and these men—how far is the alley from there?

A. Well, that is just about what I suppose to be about one hundred feet.

Q. Some of these men, then, were at the alley, these four men that you have said were there?

A. I tell you they were right where our office is.

Q. How many were there?

A. There was about four there, that is, the following Monday morning.

Q. The following Monday morning. The same, I suppose, was true on Monday evening, and on Tuesday, and so on?

A. We didn't pay much attention the first one or two days, because we didn't try to operate.

Q. But continuously while the strike was on there were three or four men at your factory doing picket duty; that was the condition, is that correct, Mr. Murphy?

A. Yes.

132 Q. Now, you, yourself, were not molested or interfered with in any way as you went to your business, were you? A. No.

Q. And did you come, or were you at the factory constantly at that time, at your factory?

A. Well, I wouldn't say constantly.

Q. Well, I mean during the business hours of the day.

A. No. His Honor had me down here for the last two weeks on the grand jury.

Q. I am talking about what occurred immediately after the strike. You said you saw some picketing done. I am asking you with reference to the times you saw this picketing going on; of course, you must have been in your factory at these times, weren't you?

A. Yes, I was the first man there in the morning.

Q. And while you were there did you come out to the front of that building very frequently to see that nobody was interfered with as they entered your factory?

A. No, I don't know that I came out for any specific purpose like that.

Q. You came out several times, many times, did you not?

A. Yes, I have come out.

Q. And you saw this picketing going on, you say?

A. Yes.

Q. With three or four men there in front of your factory, and you didn't hear any remarks, or anything of that kind?

A. Well, I saw this one man, Berg, stop two men from going into our plant and they turned away and walked away.

Q. You said he stopped them from going in: Did you see them go up and stop him?

A. I saw him go up and talk to them.

Q. But you did not hear what was said, did you?

A. As soon as he talked to them he turned around and walked away.

133 Q. You understand my question: Did you hear what was said to him?

A. No, his back was turned. I didn't hear what he said.

Q. You don't know, then, as a matter of fact, what they said to this man who turned around and went back at that time? A. I know the effect.

Q. I am not asking for the effect; I am asking you if you heard what was said at that time, and that will be sufficient for me. A. No.

Q. All of your employes who were employes of the Herkert & Meisel Trunk Company— A. I didn't catch that.

Q. All of your employes working for the Murphy Trunk Company—by "all of your employes" I mean all the leather workers—were members of the International Union, were they not?

A. You will have to change that, because it made every employe, whether he was a leather worker or trunk maker—

Q. Prior to the strike they were all members of the International Union, all the leather workers in your employ?

A. They forced us to the point.

Q. Can you not answer my question? Now, were they or were they not members? A. Yes.

Q. They were, and you have a contract which expired shortly before the time they walked out, had you not, your firm? A. Contract with who?

Q. With these members of the union; you had a contract with them?

A. We had what was supposed to be a contract with our specific employes.

Q. And that contract had expired, the period of the
134 contract had expired? A. On April 1st.

Q. They walked out on the 10th? A. Yes.

Q. And between April the 1st and April 10th you had some negotiations relative to having a new contract made?

A. Yes.

Q. You and the other plaintiffs in this case? A. Yes, sir.

Q. And it was during these negotiations that these men left your employment, was it not? A. Yes.

Q. All of these men that left your employment were members of the Union? A. Yes, sir.

Q. Every one of them. Are you a member of the association of trunk manufacturers here? A. Yes, sir.

Q. You have such an organization?

Mr. Holland: We object to that, your Honor, in the first place, it is immaterial, and secondly, it was not asked on direct examination.

Mr. Leahy: That is true. I am very well aware of that, that the question was not asked, and perhaps in that sense of the word it would be improper at this time, although I take it your Honor wants to get at the real equities of the case—

The Court: He may answer. Of course, it is doubtful whether the rule as to examination in chief ever applies where one of the plaintiffs, or a party, is a witness.

Mr. Leahy: Q. Now, Mr. Murphy, your firm, that is, the P. C. Murphy Trunk Company, was a member of this association of trunk manufacturers? A. Yes.

Q. And you have such an organization? A. Yes, sir.

Q. And these plaintiffs are members of that organization, that is, the Herkert & Meisel Trunk Company, the
135 P. C. Murphy Trunk Company, James A. Quirk, the Stability Leather Goods Manufacturing Company, and the H. A. Kolb Trunk & Case Co? A. Yes, sir.

Q. All of these plaintiffs named here, and this suit was brought jointly by them all? A. Yes, sir.

Q. Now, all of these members of the association, of which the P. C. Murphy Trunk Company is one member, during these negotiations met and conducted them with the employes of the various Companies that I have named here?

A. Yes, sir.

Q. And the manufacturers' organizations that I have referred to, that is, the Trunk Manufacturers' Association, they have combined together for the purpose of coming to an agreement with all of the members of this union, have they not?

Mr. Holland: We object to the form of that question.

Mr. Leahy: All right.

Mr. Holland: Mr. Leahy knows the facts better than that. Mr. Leahy knows that they met at the request of

the Government mediator from the Department of Labor, and it was at his instance, and Mr. Leahy knows the facts—

The Court: He may answer.

(Previous question read.)

A. I don't like that word "combined." It was not any combine; it was sort—we got together.

The Court: You may answer the question by saying yes or no, and then you can make any explanation that the facts warrant.

Mr. Leahy: That is true.

The Witness: Now—

136 Mr. Leahy: Now, is it not also true—

The Court: He desires to explain.

Mr. Leahy: I beg your pardon.

The Witness: The way we got together was this: We took the representatives of all employes from the various factories here, together with the various factory managers or representatives, so that we could combine together, both as employes and employers, and see that the same conditions prevailed in every factory.

Q. In other words, the trunk manufacturers had some combination or another? A. Gotten together for that purpose.

Q. The trunk manufacturers had a combination the same as the Labor Union? A. I wouldn't say it that way.

Mr. Holland: I fail to see the materiality of that. A labor union has a right to organize, and if these people are organized they have a right to organize.

Mr. Leahy: We are not disputing the right.

The Court: Yes. There will be no question raised in this case about any sort of thing of that kind. I don't think you need go into it.

Mr. Leahy: I was going to lead up to something else.

The Witness: I don't like that word "combine."

Q. Mr. Murphy, is it a fact, or was it a fact prior to the time that this strike was on—was it the custom, rather,

that if a man was discharged by one of the members of the leather manufacturers that he couldn't get employment from another leather manufacturer?

137 Mr. Holland: That is objected to. There is nothing at all pleaded in this man's answer; his return does not say a word; he does not deny that there was an unlawful combination here, as we allege, and that there was an unlawful conspiracy formed.

The Court: I don't think that is within the issues.

Mr. Leahy: We do allege that there was an unlawful combination, in our return, upon the part of the plaintiffs in this case, as against the labor union.

The Court: That may be true, but the question here is not whether these people struck or not; not whether they had a right to strike. They had a right to strike if they wanted to. No man is compelled to work for another man any longer than he sees fit. The only issue here is whether, having exercised the right to work for whom they pleased, for what wages they pleased, and for what length of time they pleased, they behaved themselves as to the picketing after they had quit work. That is the only question here. So it can throw no light on this matter as to whether these manufacturers were in a combination or not.

Mr. Leahy: Of course, the view that I had of it—I realized the case would be within these narrow issues, but this being an equity suit I didn't know just what idea your Honor would take of it, whether you would go into the general merits of the case, because I was prepared to show that these men who went out on strike had ample justification for taking that radical step.

The Court: It does not make any difference. They could quit with or without reason, with or without any sufficient reason. They can strike of their own volition, so long as what they did afterwards did not unduly interfere with the plaintiffs' business.

138

Mr. Leahy: That being so—

The Court: The issues are simple. I don't care why they struck.

Mr. Leahy: That being so I will not go farther.

The Court: I am only interested in the kind of behavior afterwards.

Mr. Leahy: Q. Mr. Murphy, the shipment of any of your goods by interstate commerce, that is, to trains or freight stations here, these were not in any way interfered with by acts of violence or anything else? You put your goods on a wagon when you wanted to ship them; nobody stopped your wagon from going down to the freight depots, or other places, did they?

A. You mean the actual running of the wagons, or interference with our—

Q. I am asking you as to the physical facts.

A. You mean interfering with the help in the shipping room?

Q. Yes. A. Yes; they were interfered with.

Q. You mean in the shipping room?

A. No; they were interfered with on their way to work.

Q. But so far as any interference with your goods that were on their way to the freight depot, or going into interstate commerce, there was nothing of that kind at all, was there?

A. That is, after the wagon left the factory it was not bothered going or coming; the wagon itself was not.

Q. There was not any interference with any of your
139 wagons as they went down to the freight depot and took these trunks, or leather goods, to be shipped in interstate commerce?

A. The interference was in loading of goods, and getting ready for shipment.

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140 FRANK MEES, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Frank Mees.

Q. You are superintendent of Herkert & Meisel Company's factory? A. Yes, sir.

Q. Which factory? [—] Thirteenth and Chestnut.

Q. How many men are employed at that factory?

A. About two hundred seventy-five.

Q. Ordinarily, before there was any strike? A. Yes, sir.

Q. Do you remember this trouble breaking out there on or about the tenth of April? A. Yes, sir.

Q. What did the men, or the women, do at that time, that walked out?

A. Why, they simply didn't report for work Monday morning.

Q. On Monday mornings, I want you to state to the Court if you know what was done by any of those ex-employes, or anybody associated with them, to your own knowledge, by way of standing around, or picketing, or interfering with the help that remained loyal, or that came to work there.

A. After the strike they picketed about every morning and every noon and every evening.

Q. What was the largest aggregate of pickets you have seen adjacent to and around your factory?

A. About fifty.

141 Q. What was their general attitude and conduct toward your help and those seeking to be employed by you, if you know?

A. Follow them up and down the street and stop them.

Q. Did you see that yourself? A. Yes, I did.

Q. Do you know of any acts of insult, intimidation or violence that you have observed yourself, or any of your employes?

A. I saw them go down there and tap them on the shoulder and talk to them.

Q. Where was that with reference to your entrance?

A. They started from the entrance; they went down the street to follow them, about one hundred feet from the entrance.

Q. Have you any women in your employ at that factory?

A. Yes, sir.

Q. Do you know whether they were bothered, of your own knowledge? A. They told me.

Q. Could you give me the name of any of your women employes who were bothered in any way? A. Yes, sir.

Q. Give their names.

A. Olive Ruby, Dorothy Lewis, Edna Reed.

Q. How long did that picketing that you describe here continue after the tenth day of April?

A. Up until about the seventh of May.

Q. And did you know any of the pickets, were they personally known to you? A. Yes, sir.

Q. I will ask you if you know a man named Charles Kaysing? A. No, sir.

Q. Do you know Ehlenbech? A. Yes, sir.

Q. Do you know John Smith? A. No.

Q. No? A. No.

Q. Do you know Litke? A. Yes, sir.

142 Q. Do you know him? A. Yes, sir.

Q. John Lechner? A. No.

Q. You know Litke, don't you [—] Yes, sir.
Q. Charles Morgan? A. No, sir.
Q. Paul Berry? A. Yes, sir.
Q. Edward Schilling? A. No.
Q. Ambrose Kuntz? A. Yes, sir.
Q. Stephen Wilhelm? A. Yes, sir.
Q. Walter Dechant? A. No.
Q. You don't know him? A. No.
Q. Esther Bradley? A. Yes, sir.
Q. Nora Wieland? A. Yes, sir.
Q. Malley Colley? A. Yes, sir.
Q. Walter Fisher? A. Yes, sir.
Q. Thomas Halliburton? A. Yes, sir.
Q. J. Perry? A. Yes, sir.
Q. John Remstedt? A. Yes, sir.
Q. Charles Reuben? A. Yes, sir.
Q. Henry Schnitze? A. Yes, sir.
Q. Benjamin Schnitze? A. Yes, sir.
Q. Theodore Summers? A. Yes, sir.
Q. Charles Tadesco? A. Yes, sir.
Q. Fred Teuschert? A. Yes, sir.
Q. Ray Watke? A. Yes, sir.
Q. Walter Weber? A. Yes, sir.
Q. John Zimmerman? A. Yes, sir.
Q. Herman Dieckhorner? A. Yes, sir.
143 Q. John Kuhn? A. Yes, sir.
Q. William Balmer? A. Yes, sir.
Q. Robert Ginner? A. Yes, sir.
Q. Tom Caito? A. Yes, sir.
Q. Frank Caito? A. Yes, sir.
Q. Rudolph Koob? A. Yes, sir.
Q. Anton Pauley? A. Yes, sir.
Q. Leo Pauley? A. Yes, sir.
Q. Robert Warsing? A. Yes, sir.
Q. Steve Zoeller? A. Yes, sir.
Q. Tony Sanson? A. Yes, sir.
Q. Annie Stecker? A. Yes, sir.
Q. Sylvester Schnitz? A. Yes, sir.
Q. Gus Henninger? A. Yes, sir.
Q. George Wenk? A. Yes, sir.

Q. You know practically all the names that I have read off, with the exception of two or three? A. Yes, sir.

Q. Now, do you know whether those on this list that you said you are acquainted with, belong to Leather Workers' Union Local No. 66?

A. About two-thirds of them, I do. The others don't work for me, they work in other factories.

Q. All those that work for you, you know that they belong to the Leather Workers' Union No. 66? A. Yes, sir.

Q. And what is your estimate as to how many on this list worked for you, or had worked for you, before this strike was inaugurated? A. What is it?

144 Q. How many of those men worked for you at the time the strike took place?

A. About two-thirds of them.

Q. About two-thirds of them? A. Yes, sir.

Q. And they are personally known to you as being members of the Union? A. Yes, sir.

Mr. Holland: Mr. Leahy, do you want to read off the names of those belonging to the Union—

Mr. Leahy: No.

Mr. Holland: Q. You say the strike took place on Saturday, or was inaugurated on Saturday?

A. Inaugurated on Saturday.

Q. On Monday what happened with reference to picketing your place, if anything?

A. Well, they just stood around the corners there and looked if anybody was going to work.

Q. You said you know a lot of those men here: How large a crowd picketed your place at different times?

A. They varied from three to ten and twenty, and one night it was fifty.

Q. And that continued up until his Honor issued the restraining order here, did it? A. Yes, sir.

Q. How are they treating you up there now?

A. Well, I occasionally see them at the corners when they are standing there.

Q. They are conducting themselves, are they?

A. Yes, sir.

Q. Did I understand you to say that you saw them

146 follow those people? A. Yes, sir.

Q. This Miss Ruby that you speak of, is she in Court?

A. Yes, sir.

Q. What is the other girl's name?

A. Dorthy Lewis and Edna Reed.

Cross Examination

By Mr. Leahy:

Q. Mr. Mees, the Herkert & Meisel Trunk Company is at Thirteenth and Chestnut Street, isn't it?

A. How is that?

Q. I say, that factory owned by the Herkert & Meisel Trunk Company fronts on Chestnut Street, does it not?

A. Yes, sir.

Q. It is right at the corner of Thirteenth and Chestnut?

A. Yes, sir.

Q. A large building? A. Yes, sir.

Q. How many front feet does that building cover?

A. Approximately about a hundred and fifty.

Q. Does it not cover the entire block there, or does it?

A. No, sir, it does not.

Q. The better part of the block? A. Yes sir.

Q. Where is the entrance to the factory that the employes go in and come out, at what side of the building?

A. On what?

Q. On which side of the building, east or west?

A. That is on the street, on Chestnut Street.

Q. I know, but east or west?

A. It is more towards the east side.

Q. It is more towards the east side. Is there any alley east of the factory? A. East of the factory? Yes.

Q. All the men and women doing the leather work, that is, known as leather workers, in the employment of your company, were members of the United Leather Workers International Union Local Lodge No. 66, were they not, at the time they walked out?

146 A. Well, I couldn't say that.

Q. Well, you have stated—

A. The members he called there, yes.

Q. You say you don't know whether all the leather workers in your employ were members of the United Leather Workers' International Union?

A. Well, I understood they are.

Q. That was your understading? A. Yes, sir.

Q. And all of them walked out, left the employment of your company, on the tenth of April? A. Yes, sir.

Q. Because they couldn't agree, you couldn't come to any agreement with reference to the dispute, or the negotiations that were then pending at that time. When did the picketing commence? A. The next day, Monday.

Q. That would be Monday? A. Yes, sir.

Q. Sunday intervened, and the next day would be Monday? A. Yes, sir.

Q. Was there anybody on that Monday interfered with as any tried to enter the factory, any of the leather workers? A. Nobody went to work.

Q. What? A. There was nobody went to work.

Q. Then there was no interference? A. No, sir.

Q. Nobody worked on Monday? A. No.

Q. When was it that you secured new people to work there in lieu of these that had left, that belonged to the union; how soon after the strike? A. About two weeks.

Q. Were the pickets on duty on the Tuesday following the strike? A. Yes, sir.

Q. Now, you said that on Monday there were from
147 three to ten?

A. About three, I suppose.

Q. Did you count them? A. Yes, sir.

Q. Were there three or ten? A. Three.

Q. You think there were three? A. Yes, sir.

Q. Then you were mistaken when you said in your direct examination, "from three to ten?"

A. At different times. Sometimes there was three in the morning and ten of an evening.

Q. There were three, at all events, that you observed on Monday? A. Yes, sir.

Q. Where were these three? A. Standing at the corner.

Q. Do you mean the corner of the alley or the corner of Thirteenth, or of Twelfth?

A. There was two at Twelfth and Chestnut, and one on Thirteenth and Chestnut.

Q. And how far is the western end of your factory from Thirteenth Street?

A. About a hundred and ten or a hundred and twenty feet.

Q. How far is the western end of your factory from Twelfth Street?

A. About two hundred and twenty-five.

Q. So they were in one instance one hundred and twenty-five feet away to the west, and in the other, about two hundred and twenty-five feet to the east, and that you say, was on the 10th. Now, on the eleventh—these three men, did you know their names?

A. I can't recall them now.

Q. You don't know who they were, and you didn't see them do anything? A. No, sir.

Q. On the eleventh, that was the day following: How many men were on duty?

A. Well, I don't remember every day, from day to day.

Q. You are testifying— A. Approximately.

148 Q. I can't supply it. I want to get your idea of this transaction.

A. I can't give you no exact testimony.

Q. Can you tell me, sir, whether there were three or ten or twenty, on the eleventh? A. I cannot.

Q. You don't know how many were there? A. No, sir.

Q. Do you know whether there was anbody there at all?

A. Yes, sir.

Q. Do you know it was raining on that day?

A. Well, they were there.

Q. You think they were there despite the rain. Now on the twelfth? A. I can't tell you, every day.

Q. You don't remember how many were there?

A. No.

Q. Do you remember whether there was one or two, or three or twenty? A. I can't.

Q. During the course of the week—I won't ask you from day to day, but the week following the strike, how many were on duty, day and night?

A. Well, there were from three to ten.

Q. There were from three to ten? A. Yes, sir.

Q. Sometimes there would be three?

A. Sometimes five.

Q. Sometimes five? A. Sometimes eight or ten.

Q. And sometimes ten? A. Approximately.

Q. Did you count the number of these pickets on all these occasions? A. No, sir.

Q. You didn't do that? A. No, sir.

Q. Did you ever count the number of these pickets?

149 A. It is easy to count of you only see three of them.

Q. Did you ever count the number of these pickets operating the strike there in front of your place?

A. As low as three, I did.

Q. But you never counted them afterwards?

A. No, sir.

Q. And as a matter of fact, Mr. Mees, you don't know how many men were in front of your building, or anywhere adjacent to it?

A. I am giving it only approximately.

Q. You stated that one night there were fifty there?

A. Yes, sir.

Q. Where were these fifty standing?

A. All over the block.

Q. Do you know where the office, the central office of the Leather Workers' Union is, their headquarters on Chestnut Street? A. I don't know the number of it.

Q. You know where that is located, don't you?

A. Yes, sir.

Q. That is in the vicinity of your factory, is it not?

A. I suppose so, yes, sir.

Q. And were these fifty men that you said you saw—

A. They were all over the block, on all four corners.

Q. What night was that?

A. It was about the 5th, I believe, of May.

Q. It was about the 5th of May?

A. Somewhere along there.

Q. And it was at night time? A. Evening, five o'clock.

Q. Did you know, or did you not know, that meetings were held at the Chestnut Street headquarters of the Leather Union? A. I did not.

Q. You know they had been meeting there, don't you?

A. How is that?

Q. You know they had been meeting there? I mean, the members of this union? A. I do not.

150 Mr. Holland: I would like to know what part of Chestnut Street he means. This place is at Thirteenth and Chestnut.

Mr. Leahy: Mr. Holland can ask any other question he wants to.

Mr. Holland I beg your pardon.

Mr. Leahy: Q. When you said that time—I think it was either the 4th or 5th of May—did you count the member of these pickets at that time, Mr. Mees? A. No, sir.

Q. You never counted them? A. No, sir.

Q. Then you don't know, as a matter of fact, whether there were three or five, or twenty or fifty, there that night?

A. I estimated it so.

Q. Did you know every man that was in that crowd of fifty, and every woman?

A. I knew they were mechanics in our line.

Q. Did you know them personally?

A. I did, yes, sir.

Q. Do you mean to tell the Court that you knew every one of these fifty persons? A. Yes, sir.

Q. Where were you standing at the time?

A. In front of the factory.

Q. Where? A. Right in front of the factory.

Q. Right in front of the factory, and you say these men were scattered all over that block? A. Yes, sir.

Q. At all four corners?

A. At all four corners, and the middle.

Q. How many were at the Twelfth and Chestnut Street corner?

A. Oh, I couldn't give you that exactly.

Q. Were there one-half, three-quarters, or what fractional part of them were there?

A. Probably a dozen on one corner, and five on another corner, and ten in the block

151 Q. There were two corners. Were they on opposite corners of Chestnut Street?

A. I would say they were.

Q. How many were at the opposite corner?

A. They were distributed in different bunches. I didn't count every one of them.

Q. How did you arrive at the number of fifty?

A. I made an estimate of it.

Q. This corner, that corner at Twelfth and Chestnut Street, that is, I believe you said, two hundred feet away from the eastern line of your factory? A. Yes sir.

Q. Were they there, these men? A. Yes, sir.

Q. Upon Twelfth Street? A. Yes, sir.

Q. You know that Twelfth Street is one of the principal thoroughfares in St. Louis, don't you? A. Yes sir.

Q. One of the great, big thoroughfares in St. Louis?

A. Yes, sir.

Q. And probably as extensively used as any street in St. Louis. Now, on the other side there were, you said, five or six or more other number of men at that eastern corner, a number of men, were there? A. They were there, yes, sir.

Q. You didn't see them doing anything, did you?

A. No, sir.

Q. So no one of these men that were there that night did a thing that you saw? A. Yes, they did.

Q. What was it?

A. They walked up and down the block and stopped the employes as they came out of the door.

Q. Whom did you see doing that?

A. Do you want their names?

152 Q. Yes, I do. A. Nora Wieland.

Q. Where was Wieland at the time he stopped your employes coming out?

A. She passed right in front of me.
Q. This is a girl that you named? A. Nora Wieland.
Q. Was she working for you ot the time? A. Yes, sir.
Q. She was not a member of the Union, was she?
A. Yes, sir.
Q. She was a member of the Union? A. Yes, sir.
Q. Had she quit your employment and went back again?
A. Went back where?
Q. Had she gone out on a strike? A. Yes, sir.
Q. And she returned? A. She has not returned—
Q. Did I understand you to say—maybe I got that wrong—that this girl, Nora Wieland, you called her, I think; did you say that she was one of the Union members that was outside on that street stopping people? A. Yes, sir.
Q. I see. Whom did she stop?
A. She stopped Edna Reed and Olive Ruby.
Q. Was Oliver Ruby a member of the Leather Workers Union, this local? A. No, sir.
Q. Did she go to work for you after the strike?
A. She worked before and after.
Q. And is the same true with reference to the other girl that you say was stopped? A. Yes, sir.
Q. Where were you standing at the time that this stopping occurred? A. Right in front of the factory.
Q. How far away from the girl when she was stopped, these two girls? A. About a hundred feet.
153 Q. You did not, therefore, hear anything that was said to them, did you?
A. I saw her stop and motion to her with her hand.
Q. That was all you saw? A. Yes, sir.
Q. You didn't hear anything said?
A. I didn't hear the words, no, sir, only what they told me.
Q. You are at your factory, I presume, every day?
A. Yes, sir.
Q. Engaged in [tour] business? A. Yes, sir.
Q. And you never saw anything, any violence, outside of the factory, personally, yourself? A. Any what?
Q. On the part of these— A. I didn't understand.
Q. I say, you never saw any violence of any kind?
A. No, sir, I did not.
Q. You didn't observe anything of that nature?
A. No, sir.
Mr. Leahy: That is all.

Re-Direct Examination

By Mr. Holland:

Q. Who was doing picketing there, if you remember, in front of your place? A. The names?

Q. Yes, just as you remember. See if there are any names on there. (Handing paper to witness).

A. Shall I call them off? Q. Yes.

A. Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitze, Benjamin Schnitze, Theodore Summers, Charles Tadesco, Fred Teutschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, William Baumer, Robert Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Warsing, Steve Zeller, Tony Sanson, Annie Stecker, Sylvester Schmitz. I think that was out, the last

154 one.

Who was that? A. Sylvestere Schmitz.

Q. You know Schmitz, but you have not seen him picketing there?

A. Yes, sir. George Wenk and Gus Henninger.

Q. Those are the men that you say at various times picketed your place since this trouble? A. Yes, sir.

Q. Now, your company has another factory at Fifteenth and Pine—is it? A. Yes, sir.

Q. Are you superintendent of that also? A. Part of it.

Q. Do you know anything about the events up there?

A. Not personally, no.

Q. Who is your man up there? A. Robert Webber.

Recross Examination

By Mr. Leahy:

Q. You have been shown the petition in this case, and you have read from the petition a number of names of men that you said you saw doing picket duty around your building: Now, were all these men present on the night that you said you saw fifty men at the various corners? A. No, sir.

Q. They were not all present? A. No, sir.

Q. You have named thirty-two: Was thirty-two the full number of men that you observed at any time?

A. Well, no, sir. That is about as near—lots of them I didn't remember the first names: I knew they were working in the factories.

Q. You are not going to say here, are you, that these thirty-two men whose names you have read from the

155 petition, were doing picket duty at your factory?

A. At various times.

Q. At various times, and that you saw them yourself?
A. Yes, sir.
Q. You think you did? A. I know so.

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156 EDWARD POTTS, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name and where are you employed?
A. Edward Potts; Quirk's Trunk Company.
Q. James A. Quirk Trunk Company? A. Yes, sir.
Q. How long have you been employed there?
A. About ten months.
Q. Where is your home? A. In St. Louis.
Q. Were you working there on or about the tenth day of April of this year, at Quirk's factory on Olive Street?
A. Yes, sir.
Q. I want you to be brief about it and tell the Court if anything happened to you by reason of any trouble up there while you were working, or going to your work, or coming from your work. A. There was only one time.
Q. When was that?
A. That was—they went on a strike Saturday and I worked until Monday—

Mr. Leahy: Speak up a little louder.

The Witness: They stopped me Monday night and told me to come out; there was a strike on.

Mr. Leahy: I want the witness to state who. He says "they" stopped him. That is a mere conclusion. He should state who stopped him.

A. Charles Morgan—

Mr. Holland: Q. He stopped—

A. —and Paul Berry.

157 Q. Those are the two men you say stopped you? Was that in front of the Quirk Trunk Company's place?
A. Yes, sir.
Q. Where were they standing with reference to the entrance to the shop or factory of Quirk at the time?
A. They were standing right in front of the door.
Q. They were standing right in front of the door. Who was with you? A. Mr. Zilch.

Q. What did this man, Morgan, say to you, or Berry, either one?

A. They said to come out, there was a strike on. I told them I had charge of the floor and I didn't think I was compelled to come out.

Q. What else did they say, if anything?

A. He said, "If you want to be a scab, go ahead and work."

Q. You are working there now, are you not? A. Yes, sir.

Cross-Examination

By Mr. Leahy:

Q. Mr. Potts, where is the Quirk Trunk Company's factory?

A. Twelve-twenty-eight Olive.

Q. How large a factory is that? A. I couldn't say.

Q. How much ground does it cover, how much frontage on Olive Street? A. It has one door entrance, on Olive.

Q. You know what the width of the building is, don't you?

A. About thirty-five feet.

Q. Is that in the center of the block?

A. Just about, yes.

Q. You say you are working at the Quirk Trunk Company?

A. Yes, sir.

Q. You were working there at the time the strike occurred? A. Yes, sir.

158 Q. And you were superintendent? A. No, sir.

Q. What were you doing?

A. I was in charge of the floor as foreman, foreman over the floor.

Q. The incident that you have referred to as taking place between yourself and Charles Morgan and Paul Berry, that was the only time you were stopped going to or from the factory? A. Yes, sir.

Q. And you didn't observe any interference with anybody else? A. No, sir.

Q. On the part of anybody, any picket there, did you?

A. No.

Q. And there were, I understand you to say, just two men in front of the building? A. Yes, sir.

Q. Were they at the corner of the street when you came out? A. No, sir; in front of the door.

Q. How far from the door?

A. Well, standing right at the front entrance, right by the door.

Q. Which of them was it that stopped you, Morgan or Berry?

A. Paul Berry.

Q. Paul Berry. And Morgan was with him, was he?
A. Yes, sir.
Q. Morgan didn't say anything? A. No, not to me.
Q. It was Berry that talked to you, was it? A. Yes, sir
Q. And Berry said to you, "Don't you know there is a strike?" Is that what he said? A. Yes, sir.
Q. Are you a member of the union? A. Yes, sir.
Q. And you were a member of the union at that time?
A. Yes, sir.
Q. That is, to be specific about it, a member of Local Union Lodge or Union No. 66 of the United Leather
159 Workers' International Union; you were a member of that Union at that time? A. Yes, sir.
Q. And Mr. Berry said to you, "Don't you know that there is a strike on?" A. Yes, sir.
Q. That is what he said, and he asked you to come out on a strike? A. Yes, sir.
Q. And that was all that occurred, was it? A. Yes, sir.
Q. That was all that took place? A. Yes, sir.

Mr. Holland: Pardon me—

Mr. Leahy: Wait a minute.

Mr. Holland: I think there was a misunderstanding there.

Mr. Leahy: Q. That was all that was said at that time?
A. That was all that was said at that time, yes, sir.
Q. And then you walked on about your business?
A. Yes, sir.
Q. And there was not any more interference?
A. I stayed out one week.
Q. What? A. I stayed out one week.
Q. You stayed out one week? A. Yes, sir.
Q. That is, you took his advice and you remained out because you were a member of the Union? A. Yes, sir.

Redirect Examination

By Mr. Holland:
Q. I understood you to say that he told you that you should not scab?

Mr. Leahy: I object to his leading the witness.

Mr. Holland: I am not leading the witness. I called the Court's attention to the misrepresentation at the time.

Mr. Leahy: There is no misrepresentation.

160 The Court: The Court has it.

Mr. Holland: Q. Do you know a boy named Herman McCommis? A. Yes, sir.
Q. Do you know where he lives? A. On Tenth Street.
Q. He is a young boy? A. Yes, sir.
Q. Was he working for Quirk? A. Yes, sir.
Q. Were you there in his company when you met Berry and Morgan? A. Yes, sir.
Q. When was that? A. About a week afterwards.
Q. Will you tell the Court what happened at that time?
A. Well, Mr. Morgan stopped this boy and told him he had better stay out. So I was with him when he said it. So Mr. Morgan goes down to the boy's house and told the boy's—

Mr. Leahy: Q. Were you present when Morgan went to the boy's house?
A. I was with the boy.
Q. Were you in the house? A. Yes, sir.

Mr. Holland: Q. What did these men say when they got to this boy's house?
A. Told his father and mother if they didn't—better keep him at home, or there—he might get his head knocked off.
Q. That was in this neighborhood where this boy lives?
A. Yes, on Tenth, somewheres.

Mr. Holland: That is all.

Recross Examination

By Mr. Leahy:
Q. Now, what day was it that Berry and Morgan, I think you said it was— A. Yes, sir.
Q. —went to this boy's house?
161 A. I couldn't say. It was about a week afterwards. I didn't keep track of the date.
Q. That boy's name was what?
A. We call him Henry. I never can tell his right name.
Q. You don't know what his right name is? A. No, sir.
Q. Was he one of the boys working in the factory?
A. Yes, sir.
Q. Did they go to the house where he lived?
A. Mr. Morgan did.
Q. Morgan only? A. Yes, sir.
Q. Did you go home with that boy to his house?
A. Yes, sir.

Q. Now, did you go into the house at that time?
A. I went in the house with the boy.
Q. Did you meet the boy's father? A. Yes, sir.
Q. How did Morgan get into the house—what room were you in? A. I was with the boy to protect the boy.
Q. Where was his father when you came into the house?
A. Well, he took us right on in the house. His mother was in the kitchen.
Q. His mother was in the kitchen? A. Yes, sir.
Q. Where was the father, in what room?
A. In the kitchen.
Q. Were you in the kitchen? A. Yes, sir.
Q. And was this boy that you have named, in the kitchen?
A. Yes, sir.
Q. And also Morgan? A. Yes, sir.
Q. They were all present there at that time, were they?
A. Yes, sir.
Q. Did Morgan say anything to the boy? A. No, sir.
Q. Said nothing to him at all? A. No, sir.
Q. But you saw him speak to his father?
A. Yes; his father and his mother.
162 Q. Where was the boy at this time?
A. He was right in the house, in the kitchen.
Q. He was there? A. Yes, in the room.
Q. Which of them was it—Morgan said this? A. Yes, sir.
Q. Will you kindly repeat against what Morgan said?
A. Mr. Morgan said they had better keep the boy away from the factory or else he might get his head knocked off.
Q. Before he said that was there some conversation that went on between himself and the boy, or himself and the father?
A. No. He told the boy before he saw his father; he told the boy he had better stay away, had better stay out.
Q. He had a conversation with the father before this time?
A. No, that was the first time.
Q. That remark was made in the conversation?
A. That was the first time he had a conversation with his father.
Q. When Morgan came into the house did he talk to the boy?
A. No. The boy took us out into the kitchen; to his father.
Q. Did he speak to McCommis, the boy?
A. He spoke to the boy on the street.

Q. He spoke to the boy on the street, but when he came into the house did he talk to him? A. No, sir.

Q. Did he talk to his father when he came into the house, before he made this remark? A. Yes, sir.

Q. And was it in the course of the conversation?

A. Say that first word again.

Q. I said, did he have that conversation with the boy's father when he came into the house?

A. Yes, sir.

163 Q. And in the course of conversation this remark was made that you have referred to? A. Yes, sir.

Q. That he had better stay away or he would get his head knocked off, or something like that? A. Yes, sir.

Q. That remark was made in the course of the conversation? A. Yes, sir.

Q. Do you know what else was said at that time?

A. No, sir.

Q. You don't know anything about that? Is the boy still working there, McCommis? A. Yes, sir.

Q. Still working in that factory? A. Yes, sir.

Q. Whom did you tell about this remark that was made by them about the boy? A. I have not told anybody.

Q. You haven't told anybody about it? A. No, sir.

Q. You never mentioned it to anybody at all?

A. No, sir.

Q. You never told your employers about it, did you?

A. No, sir.

Q. Or Mr. Holland? A. No, sir.

Q. As a matter of fact, so far as you know, he was not aware of what you were going to testify to today; he didn't know anything about it? A. How is that?

Q. So far as you know, from any information that you had to give; so far as you know, Mr. Holland didn't know anything about it? A. No, sir.

Q. When did you first tell anybody about it? You never told anybody about it? A. I never told anybody.

Mr. Leahy: That is all.

Mr. Holland: This boy's wife or sister is very ill in Jefferson City. May he go, your Honor?

Mr. Leahy: That is satisfactory to me.

164 HERMAN McCOMMIS, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Herman McCommis.

Q. Where do you live, Herman? A. 105 North Tenth Street.

Q. Is that in this immediate neighborhood around here some place? That is around this neighborhood, is it?

A. Yes, sir.

Q. Where do you work, Herman?

A. I work at Quirk's trunk—

Q. Where? A. Quirk's Trunk factory.

Q. Do you live with your parents? A. Yes, sir.

Q. At 105 North Tenth Street? A. Yes, sir.

Q. Is your father alive? A. Yes, sir.

Q. And your mother? A. Yes, sir.

Q. And do you live with them? A. Yes, sir.

Q. Now, do you know a man named Charles Morgan?

A. Yes, sir.

Q. And do you know a man named Berry? A. Yes, sir.

Q. Do you remember those two men, or either one of them, having ever followed you to your home? A. Yes, sir.

Q. Which one of them followed you to your home?

A. Charles Morgan.

Q. Charles Morgan? A. Yes, sir.

Q. Did he go into the house? A. Yes, sir.

Q. He went upstairs? A. Yes, sir.

Q. After he got in there what did he say to you?

A. He told my father and mother that they had bet-

165 ter keep me away, because—

Q. Speak louder, Herman.

[Q.] They told him I had better stay away, because somebody was likely to knock my head off.

Q. Which one of them went to the house?

A. Charles Morgan.

Q. But you had met both those men, did you, before that?

A. Yes, sir.

Q. Where did you meet them?

A. On the corner of 12th Street, 12th and Pine.

Q. Did you have a conversation with them there?

A. Yes, sir.

Q. Now, Twelfth and Pine, that is about a block away from the trunk factory of Quirk, is it? A. Yes, sir.

Q. What time of the day or night did they call at your home? A. About half-past five.

Cross-Examination

By Mr. Leahy:

Q. Herman, how many boys are working at the factory beside yourself, or were at that time? A. There is about six.

Q. What? A. About six.

Q. How many? A. About six boys.

Q. And you were working continuously day after day since the strike went on, or shortly after, were you?

A. No, sir.

Q. When did you start in to work? A. Since the strike?

Q. Yes. A. About a week ago.

Q. About a week ago? A. Yes, sir.

Q. And since that time you have been going down to the factory and you have not been interferred with at all, have you?

A. No, sir.

166 Q. Was it while you were—were you out on strike?

A. It was while I was working there, during the strike.

Q. When was it that Morgan went to your house?

A. About the 17th.

Q. Of what month? A. December.

Q. Of what? A. Of December.

Mr. Holland: It is evident that the boy does not mean December. I don't want to interfere at all, but I ask leave to correct him on that.

Mr. Leahy: You can correct it yourself.

The Court: You may correct him later.

Mr. Leahy: Q. The day that Charlie Morgan came to your house was on the 17th of December? A. Yes, sir.

Q. And at that time you were working in the factory?

A. Yes, sir.

Q. Was it to you or your father that he was talking when he went into the house? A. It was to my mother, mostly.

Q. Well, where was your mother? A. She was at home.

Q. Was she in the house? A. Yes, sir.

Q. Where was your father? A. He was in the house.

Q. What does he do? A. He works on a wrecking gang.

Q. Where? A. A wrecking gang, wrecking houses.

Q. What time does he get home in the evening?

A. Half-past four.

Q. He was home this evening, was he? A. Yes, sir.

Q. Was it to your father that Morgan was talking when he went into the house? A. To my mother.

Q. So he was not talking to your father at all, was he?

167 A. Yes, he was talking to my father, too.

Q. He didn't say anything to your father, or to your mother, but he said to your father that you had better stay away or you might get your head knocked off?

A. Yes. He said that to my mother, too.

Q. He said that to your mother, too? A. Yes, sir.

Q. But he didn't say anything to your father, and that took place on the 17th of December last? A. Yes, sir.

Q. That is right, Herman, isn't it?

A. Yes, I think it is.

Q. That is true? A. Yes, sir.

Redirect Examination

By Mr. Holland:

Q. Was this Potts boy with you at the time?

A. Yes, sir.

Q. Do you know whether this thing occurred before last Christmas or after Christmas? A. After Christmas.

Q. After Christmas? A. Yes, sir.

The Court: Q. How long ago has it been, how many days ago? A. It has been about two months ago.

Q. Two months ago? A. Yes, sir.

Q. Was it before this strike took place or afterwards?

A. It was before, I think.

Q. Do you know when this strike took place?

A. Yes, sir.

Q. Were you working at the factory then?

A. Yes, sir.

Q. And this happening was before the strike took place?

A. It was after the strike.

Q. After the strike took place. Can you tell about how many days ago it has been, or how many weeks?

A. I couldn't tell you.

168 Recross Examination

By Mr. Leahy:

Q. Do you know the day that the strike took place?

A. No, I don't believe I do.

Q. You don't know. Then you don't know whether this conversation that you have detailed here took place before the strike or after, do you? A. It was after.

Q. You don't know that. You don't know what time this strike took place, what day of the month, or anything? You don't know? A. (No answer).
Q. How old are you? A. Fifteen years old.
Q. Fifteen? A. Yes, sir.

The Court: Do you know what month this is?

A. May.
Q. Who was with you, if anybody? A. Who was with me?
Q. Who went in the house with you?
A. Charlie Morgan.
Q. Anybody else? A. Ed Potts.
Q. This same man, Ed Potts, was there with you?
A. Yes, sir.

Mr. Leahy: Q. Now, did you tell anybody about this remark that Charlie Morgan made? A. No, sir.
Q. You never told anybody about it, did you?
A. No, sir.
Q. You kept that to yourself. You went back to work, though, didn't you?
A. No; I never went back to work after they went to my home.

Redirect Examination

By Mr. Holland:
Q. What was that answer?
A. I never went back to work.
Q. You never went back to work after that? A. No.

Mr. Leahy: Q. You are working now, aren't you, Herman? A. Yes, sir.

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169 ARCH ZILCH, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:
Q. What is your name? A. Arch Zilch.
Q. And your business?
A. Superintendent, James A. Quirk Company.
Q. That is where those boys work, is it? A. Yes, sir.
Q. You are superintendent for Quirk? A. Yes, sir.
Q. Those little boys work for you? A. Yes, sir.

Q. Were you present in the evening at your store, around your store, at any time that this boy and the other boy, Potts, were stopped? A. Yes, sir.

Q. You saw that, did you? A. Yes, sir.

Q. Could you tell his Honor what date that was?

A. About Monday, after the strike was called. Potts and McCommis, and three or four girls I had there, were starting out and Charles Morgan and Berry were standing in front of the door and stopped them, and told them there was a strike on and they had better not go back to work, and the next day they all stayed home.

Q. What effect, if you know—you were present—did the action of those parties have upon these people?

A. It scared them away.

Mr. Leahy: I object to that. That calls for a conclusion. He may state as to the—

Mr. Holland: The actual fact is, he says, that they scared them away. That is a fact, and a very material one.

170 The Court: He may state what was done to them, and then he may state what they did, or failed to do, thereafter.

Mr. Holland: He has done that.

Q. Now, at the time of those acts of Morgan—and Berry, was it? A. Berry.

Q. —took place, what was the immediate effect that you noticed upon your help?

Mr. Leahy: I object as to the effect. It is not shown that these men said or did anything.

The Court: If that effect was that after being stopped and spoken to they failed to come back, he may state that. If there is any inference to be drawn from the two—

The Witness: They scared the boys away; they failed to come back to work. The McCommis boy came back a week later to get his pay. I asked him what the trouble was—

Mr. Leahy: That is objected to, your Honor.

The Court: Yes.

Cross-Examination

By Mr. Leahy:

Q. Mr. Zilch, you are superintendent, you say?

A. Yes, sir.

Q. Of the Quirk factory? A. Yes, sir.

Q. Out on Olive Street, as detailed by the previous witness? A. Yes, sir.

Q. What was the condition of the weather on that Monday after the strike, was it a wet day— A. I couldn't be positive.

Q. Do you recall that specifically?

A. I couldn't be positive, to tell you what the condi-
171 tion of the day was.

Q. Whom did you see in front of your factory, or in the street adjacent to it?

A. Paul Berry and Charles Morgan.

Q. And you said that they stopped to talk to this boy, Potts? A. Yes, sir.

Q. And how old is he?

A. Potts is about twenty-four, twenty-five or twenty-six.

Q. And there was a boy with him? A. The McCommis boy.

Q. The boy that has just testified, Herman McCommis, I believe the name is? A. Yes, sir.

Q. Which was it, Berry or Morgan, that stopped to talk to these two boys?

A. Berry is the one that did practically all the talking.

Q. Where were Berry and Morgan standing at that time?

A. Right smack in front of the middle of our doorway, not two feet from the entrance, right on the sidewalk.

Q. Where were you?

A. When I saw them standing out there talking I walked out and listened to them.

Q. Did you hear any conversation, or were they talking before you got to the door?

A. I heard the conversation. I got out there.

Q. Did you hear the entire conversation?

A. I stood there until they walked away.

Q. And you heard Morgan say there was a strike on?

A. I heard Berry say that.

Q. You heard Berry say there was a strike on?

A. Yes, sir.

Q. And what else?

A. And told them they had better not go back to work.

172 Q. Berry said there was a strike on and they had better not go back to work? A. Yes, sir.

Q. That is what you heard, and that is what they said?

A. Yes, sir.

Q. And that is all they said?

A. And that is all they said.

Q. And these boys were members of the Union, were they not? A. Yes, sir.

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173 ROBERT WEBBER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Robert Webber.

Q. And what is your business?

A. Foreman, Herkert & Meisel.

Q. How long have you been employed in that capacity?

A. One and a half years.

Q. How long have you worked for Herkert & Meisel altogether? A. About seven years altogether.

Q. Are you a trunk maker by trade?

A. No, sir, a leather worker.

Q. A leather worker? A. Yes, sir.

Q. What particular factory of Herkert & Meisel are you assigned to? A. Fifteenth and Pine.

Q. How far is that distant from the factory at Thirteenth and Chestnut? A. About five blocks.

Q. How many persons do you employ at your Fifteenth Street factory, in round numbers, when there is no labor trouble? A. About seventy-five.

Q. On or about the 10th, or prior to the 10th day of April, did you have that number of people working for you?

A. Yes, sir.

Q. That is a smaller factory than the other factory?

A. Yes, sir.

Q. Do you know a man named Dieckhorner?

A. Yes, sir.

Q. What does he do for a living, do you know?

A. He is a polisher in our line of business.

Q. What kind of a polisher, in the trunk factory?

174 A. Yes; he is a polisher in the Trunk factory.

Q. Did he ever work for you?

A. Yes, sir.

Q. When?

A. Until the strike.

Q. Have you seen him since the strike was inaugurated?

A. Yes, sir.

Q. Where did you see him?

A. When the pickets had begun duty; when the pickets had begun duty.

Q. Have you ever seen anybody else with him?

A. Yes, sir.

Q. Whom did you see with him?

A. Well, I saw quite a number that worked for me. Do you want me to mention the names?

Q. Yes, if you know them.

A. Gus Templemeier, Frank Wolken, John Wolken, Brown Yamis, Melvin Thurber, Herman Dieckhorner,—

Q. Speak up so we can hear.

The Witness: Gus Templemeir, Frank Wolken, John Wolken, Brown Yamis, Melvin, Thurber, Herman Dieckhorner—I believe that is all.

Q. Those names that you have read: Do you know or not know whether they belong to the United Leather Workers' International Union Lodge or Local No. 66?

A. Yes, they belong to the Union.

Q. You know that?

A. Yes, sir.

Q. Do you know a man named Al Birkenmeier?

A. Yes, sir.

Q. Do you know what his business is?

A. Yes, sir.

Q. What is it?

A. Business agent.

Q. For what?

A. For the Union Local No. 66.

Q. Do you know H. Ehlenbeck?

A. Yes, sir.

175 Q. What is his business?

A. Well, I don't know what it is now, but the time I was in the union he was president.

Q. You know that he is a union man?

A. Yes, sir.

Q. And attached to No. 66?

A. Yes, sir.

Q. The same is true of Kaysing, is it?

A. Yes, sir.

Q. And John Smith?

A. I don't know him.

Q. Do you know John Lechner?

A. No, sir.

Q. Do you know Edward Schilling?

A. Yes, sir.

Q. What does he do?
A. He was an organizer.
Q. Do you know what he was on the 10th day of April?
A. I guess he was organizer for the union.
Q. So far as you know he is organizer yet, is he?
A. Yes, sir.
Q. Now to get back to this I asked about: Did Dieckhorner—when Dieckhorner was doing picket duty around there, did you or not see him interfering with any persons who were in or about your place?
A. No, sir, he didn't interfere with anybody, but he made a remark. He saw somebody working there and said he would like to get his hands on them.
Q. Tell the Court all he said and in what—what his attitude was at the time, and how close he was to your place of business.
A. He was on the same side of the street as the factory at 15th and Pine, on the 15th street side, and he thought he saw somebody working in there, and he said that he would like to get his hands on to him.

Mr. Leahy: Did this man hear that remark?

A. No, sir.

Mr. Leahy: I ask that be stricken out.

The Court: Overruled.

176 To which ruling of the Court the defendants, by their counsel, then and there, at the time, duly excepted.

Cross Examination.

By Mr. Leahy:
Q. Mr. Webber, you say you are foreman at the Pine Street factory?
A. Yes, 15th and Pine.
Q. What is the length of that factory running along that street, Pine Street?
A. I should judge it would be about eighty feet.
Q. It is a large factory there. How many men are employed?
A. In the entire factory, about seventy-five.
Q. Prior to the strike, I mean, of the leather workers.
A. Leather workers alone?
Q. Yes.
A. Well, in fact, we don't do very much leather work there. It is mostly our cheaper grade work.

Q. When was it, how long after the strike was it that Dieckhorner came there?

A. That was before the restraining order.

Q. Well, do you recall the date??

A. That must be about three weeks ago.

Q. And you were there every morning?

A. Until the last week.

Q. And remained there during the day?

A. Yes, sir.

Q. In the discharge of your duties? A. Yes, sir.

Q. And I presume that you went to the front door to see how things were going on on the outside?

A. Yes; I went to see who was standing around the place.

Q. You have told us the incident that occurred with Dieckhorner in which he had this conversation with you?

A. Yes, sir.

Q. That is the only thing that you remember in con-
177 nection with the strike?

A. Yes, sir.

Q. Did you notice pickets outside on the—

A. Yes, sir.

Q. Were they in front of the buildings, or at the street corners?

A. In front of the building. Our factory is right at the corner of 15th and Pine. They stayed all around.

Q. How many?

A. I saw as high as eight or ten at a time.

Q. Morning or evening?

A. Well, most any time. They would have different pickets, it looked like.

Q. You, of course, as superintendent of that factory, you were watching what was going on on the outside, very largely?

A. Yes, sir.

Q. To see that no act of violence was done of any kind, and you have given us this one specific thing that was said to you by Dieckhorner?

A. Yes, sir.

Q. And Dieckhorner—was Dieckhorner a member of the Local Union?

A. Yes, sir.

Q. Well, what day was it that you observed Dieckhorner there?

A. Well, if I would get right down to dates probably I couldn't do that, but it was about three weeks, so you can figure back.

Q. Evening or morning?
A. It was in the evening.
Q. And this conversation that you have detailed, that occurred out on the street, did it?
A. Yes, sir.
Q. And was that conversation carried on in quiet tones by you and Dieckhorner?
A. Yes, sir.
Q. It never went any farther than you, did it?
A. Not that I know of.
Q. You made an affidavit in this case, did you not, Mr. Webber?
A. Yes, sir.
178 Q. And you have made this statement: "The strike was inaugurated against the said Company" (that is the Herkert & Meisel Company) "on or about April 10, 1920; that since that time, at various intervals, a large number of men have congregated in and around and adjacent to the place of business of the said Herkert & Meisel at 15th and Pine Streets, and by threats and force of numbers and grimaces have endeavored to frighten and to intimidate the would-be employes of the said Company." Is that true?
A. Well, we had three or four people come there and they threatened them.
Q. I ask you the question if that was the only instance, the instance that you have given me of Dieckhorner, that you observed?
A. I thought you were referring to that one instance.
Q. Yes, I asked about that in my cross examination, if that was the only instance of violence that you remembered or recalled in connection with the strike, and did you not say that it was?
A. It is the only one of violence, yes.
Q. Then why, if that is the only one of violence, did you charge in your affidavit that by threats, at various intervals, a large number of men had congregated in and around and adjacent to the factory and place of business of said Herkett & Meisel Trunk Company at 15th and Pine Streets, and by threats, force of numbers, and intimidation, have endeavored to threaten and intimidate the employes and would-be employes of the said Company: Why did you make that statement, under your oath?
A. I made that statement on account of the one woman we had working there. They threatened her.
179 Q. Did you see that, or know anything about it?
A. She told us of that.

Q. That was all you know?
A. Yes, sir.
Q. But the only incident that you could speak of with any definiteness, was as to what Dieckhoefer said to you?
A. And Anna Howard. They stopped this one woman that same night while I was there. I told that woman not to pay any attention, to go away and go on.
Q. You only saw one instance occurring and that was what occurred with Dieckhorner?
A. With that woman, also.
Q. With that woman, also.
A. Yes. She will tell you herself, if she is here.
Q. Who was making the grimaces, who did you see making grimaces? You know what "grimaces" are, making faces.
A. Making faces.
Q. Who made the faces, do you know?
A. No, sir.
Q. Then that is not true, is it?
A. I didn't see anybody make faces.
Q. You never saw anybody making a face, did you?
A. No, sir.
Q. Then why did you put it in your affidavit; why did you swear to it? Will you let me suggest a reason? Was it to make a case here?
A. No, sir.
Q. Why did you swear to it?
A. No; I wouldn't do anything like that to make a case here.
Q. Are you able to say why you swore to it?
A. No, sir.
Q. It is not true, anyhow. All right. Whom did you see, outside of what Dieckhorner said to you, whom did you see doing any intimidation there, yourself?

180 Mr. Holland: Pardon me—

The Witness: They ordered one of our colored men to stay away from there.

Mr. Leahy: I am asking what you yourself saw, what you swore to? Whom did you see quit because of intimidation at that place?
A. I didn't see anybody, personally.
Q. You didn't see anything?
A. No.
Q. That, so far as you know, is not true of your own knowledge?

A. Yes, sir.

Q. Now, you said by force of numbers; You observed, you say, from five to ten men?

A. From five to ten men, yes, sir.

Q. Did you count them?

A. Yes, sir.

Q. When did you make that count?

A. Why, on several occasions.

Q. You didn't count them all the time, did you?

A. No, sir.

Q. Your factory covers a considerable space of ground out there, does it not?

A. It is about forty by eighty, something like that.

Q. Did you observe them in the evening or in the morning?

A. Yes, sir.

Q. Do you know where the headquarters of the Local Union are down there at Chestnut Street and 10th or 11th?

A. I believe I do, yes, sir.

Q. That is in the vicinity of this place?

A. No, it is quite a ways.

Q. A few blocks, or what? You know the men that come from that headquarters pass by your factory, and the other factories, on their way home, don't you?

181 A. They pass it.

Q. And they pass by going down to their meeting place, their hall, at Thirteenth and Chouteau; you know that to be true?

A. Well, not at that hour of the day.

Q. You have said there were from five to ten men doing picket duty; name them.

A. Yes, they were these at one time: Gus Templemeier, Frank Wolken, John Wolken, and some fellow that worked in Murphy's—I don't know his name—Polis, or something like that. Probably Mr. Murphy knows.

Mr. Holland: Q. Do you mean Nic Pouls?

A. I believe that is it.

Mr. Leahy: Q. Were these men there constantly, every day?

A. No, sir, not every day.

Q. Not every day?

A. No; they changed about.

Q. They changed about?

A. Yes, sir.

Q. Were there pickets on duty all the time?

A. Up until the restraining order, yes.
Q. And you continually observed their conduct?
A. Most of the time; I didn't have to watch them all the time.
Q. You observed them most of the time; you were on the watch every day—
A. I had work to do also.

Redirect Examination

By Mr. Holland:
Q. Mr. Leahy asked you about your affidavit: Did you state this in your affidavit: "Affiant further states that the attitude of the strikers who were picketing the factory as aforesaid, has resulted in tying up said factory, and the
182 said Company has been unable to fill its orders which it has on file in interstate commerce." Is that true?
A. Yes, sir.

Mr. Holland: That is all.

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183 Olive Ruby, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiffs as follows:

Direct Examination.

By. Mr. Holland:
Q. What is your name? A. Olive Ruby.
Q. And where do you live Miss Ruby?
A. 1527 Olive.
Q. Where are you employed?
A. Herkert & Meisel Trunk factory. 1218 Chestnut St.
Q. That is that factory at Thirteenth Street there, is it?
A. Yes, sir.
Q. Were you employed there around the 24th of April?
A. Well, I was there a week before the strike.
Q. You were there before the strike?
A. Yes, a week.
Q. Did you go out?
A. Saturday, yes, I was not a union—
Q. But you have worked there all the time since, have you?
A. Well, no.
Q. How long did you work?
A. I worked there four days, three days. They went out on Saturday. I didn't go to work Monday. I went back

Tuesday morning, and I worked Tuesday, Wednesday and Thursday. Thursday night I was threatened.

Q. Now, on Thursday night, the first Thursday night following the inauguration of the strike, you were threatened?

A. I didn't come to work Monday at all. I didn't
184 come Friday.

Mr. Leahy: I object to that statement and ask that it be stricken out. It is a mere conclusion. She said she was threatened. Let her state the facts.

Mr. Holland: All right.

Q. You say that on Thursday—what happened to you on Thursday?

A. A lady stepped up to me and told me she didn't want to catch me in the factory again.

Q. What time of the day or night was that?

A. Five minutes to five, when they quit, and just as I was going around the corner.

Q. Just as you got out from work?

A. I had gotten over on the other corner.

Q. How many people were coming out of the factory with you at that time?

A. I don't know; I never looked.

Q. Do you know who this woman was?

A. No, sir.

Q. She was standing there, was she?

A. She was on the opposite corner, standing by a store.

Q. Did she make any grimaces or faces at you, or what was her attitude, particularly?

A. She stepped up to me.

Q. If you know, what was her attitude and general demeanor while she was addressing those remarks to you?

A. She stepped up to me and told me she didn't want to catch me in the factory again.

Q. Have you had occasion to notice the pickets around there after the strike was called?

A. Yes, sir.

Q. When did you see them, can you say; was it in the morning or going home?

A. Both times.

185 Q. Had you ever seen her there before, that same woman? A. No.

Q. Who was with her at the time?

A. Nobody, I don't think.

Q. How close was she standing to the factory?

A. On the opposite corner of the street.

Q. What did you say to her?
A. I said I didn't want no trouble and I would stay to home.
Q. So you stayed home?
A. I stayed home for a week and then I got a statement from the Company that their employes were to come back, this is, they opened their factory.
Q. You say when you met that woman on Thursday evening, that you didn't come to work the next morning?
A. No, sir.
Q. And you didn't come to work for a week?
A. No sir.
Q. What caused you to stay away?
A. Because I was threatened.

Mr. Holland: Take the witness.

Cross Examination

By Mr. Leahy:
Q. Miss Ruby—by the way, is it Miss or Mrs. Ruby?
A. Mrs.
Q. You are a married lady? A. Yes, sir.
Q. You, at the time of the strike, previous to the strike and at the time of the strike, were a member of Local Union No. 66? A. No, sir; no, sir.
Q. You were never a member of the Union, were you?
A. No, sir.
Q. But you were working at the factory? A. Yes sir.
Q. And you didn't have any trouble before that time?
A. No. I didn't know a soul in there.
Q. You didn't have any trouble, I asked you, before that time? A. No, sir.
186 Q. Now, the strike was on the 10th of April. That was on a Saturday? A. Yes, sir.
Q. You recall that, and then when did you meet this lady whose name—who you said accosted you and talked to you?
A. I went back on Tuesday, I said, and worked until Thursday.
Q. You worked until Thursday?
A. And Thursday night is when she spoke to me.
Q. And Thursday night is when she spoke to you, on Thursday? A. Yes, sir.
Q. What sort of a woman was she, tall or small?
A. Medium height.
Q. Medium? A. Yes, sir.
Q. You didn't know her name?
A. I didn't know any of the girls' names.

Q. You don't know what she was doing there? A. No.
Q. You say you saw her—let me see, before I get to that: You said she said to you that she didn't want you to go to work in the factory? A. Yes, sir.
Q. You were doing leather work, weren't you?
A. Yes, sir.
Q. Did she tell you there was a strike on? A. Yes, sir.
Q. Let us get that: She said, there is a strike on and you should not go back to the factory again: Now, that is what she said? A. Yes, sir.
Q. And you didn't go back to the factory?
A. No, I did not.
Q. That is, for one week? A. Yes, for one week.
Q. But you did go back to the factory?
A. I certainly did.
Q. And you continued with your work? A. Yes, sir.
Q. You haven't been interfered with since?
A. Yes, sir.
187 Q. When? A. The following Tuesday.
Q. The following Thursday? A. Yes, sir.
Q. Who was it that time? A. The same woman.
Q. The same lady. You don't know her name?
A. No, sir.
Q. What did she say to you that time?
A. She just came up and hit me on the shoulder.
Q. Patted you?
A. Hit me on the shoulder like that, (illustrating) and told me she wanted me to stay out there.
Q. She patted you on the shouder? A. Hit me.
Q. Was it a pat or a hit? A. It was a slap.
Q. So you call it a slap?
A. Yes, sir. I said, "are you paying my expenses?"
Q. What did she say? A. She said nothing.
Q. She said nothing; you had it all your own way that time, did you not: you had the best of the encounter, did you not? A. In my opinion I did.
Q. In your opinion you did. And that pat on the shoulder, that didn't hurt you, did it? A. She slapped rather hard.
Q. You think it was? A. I imagine it was.
Q. Was there anybody else that said anything to you at that time?
A. There was a man outside of the door one morning.
Q. What was his name?
A. I don't know any of them.
Q. What did he say?

A. He told me there was a strike on and not to go in there.

Q. That is all he said? A. Yes, sir.

Q. Was there anybody else who said anything to you?

A. A lady and a gentleman was walking past the
188 factory and said she was going to beat our ears off.

Q. A lady and a gentleman? A. Yes, sir.

Q. Who were they? A. I don't know who they were.

Q. What? A. I don't know who they were.

Q. Who were they talking to when they said that?

A. Me and Miss—

Q. Was there anybody— A. Miss Reed was with me.

Q. Did anybody else say anything to you? These were the only instances that you can now recall in which anything was said to you while you were at work in that factory: That is true, is is not? A. Yes, sir.

Q. Nobody called you any bad names?

A. Oh, such as "scabs", like that.

Q. Who was it?

A. Strikers that were outside. I don't know any of them.

Q. Let us get that: Did this woman say anything of that kind to you? A. No, she did not.

Q. What I want to get at is this: These two occasions, you had two controversies with this woman, whose name you don't know. The first time she told you there was a strike on and not to go to work at the factory? A. Yes, sir.

Q. The second time you met her was when she put her hand upon your shoulder? A. Yes, sir.

Q. And she told you you should not work there, and you said you had the best of the encounter?

A. I asked her if she was paying my expenses.

Q. You asked her if she was paying your expenses,
189 and then you said you met a lady and a gentleman, and they both spoke to you about going to work in the factory: they didn't touch you; and there was not anybody outside of this woman— A. No.

Q. —that laid her hand upon your shouder that ever touched you? A. No, sir.

Q. That is true, is it not? A. Yes, that is true.

Q. You made an affidavit in this case, did you not?

A. Yes, I did.

Q. Let me call your attention to the statement which you made in that affidavit: "That commencing about the 24th of April, 1920, she, the affiant, has been frequently assaulted and called violent and indecent names by a number of persons whose names are to her unknown, and who were doing

picket duty around, in front of and adjacent to the said Herkert & Meisel factory:" You made that affidavit?

A. Yes, sir.

Q. Was there anybody else touched you outside of—

A. Nothing only calling those names—

Q. Had anybody else assaulted you? A. No, sir.

Q. Why, then, did you state in your affidavit that you had been frequently assaulted by a large number of persons whose names were unknown to you?

A. What else would you call it?

Q. Who were the number of persons, outside of this woman, whose name you don't know?

A. There was five one evening there.

Q. What? A. There was five that same evening.

Q. But this was the only case in which you were assaulted, and the assualt consisted in that woman laying her hand hand upon your shoulder, and you had the best of the
190 encounter. Whom did you tell about this interview that you had with this woman, or what this woman said to you? A. I told Mr. Mees.

Q. That was your superintendent? A. Yes, sir.

Q. When did you tell him that?

A. The very next morning.

Q. You went back to work afterwards and are working still, aren't you? A. Yes, sir.

Q. Still working there? A. Yes, sir.

Re-Direct Examination

By Mr. Holland:

Q. You never got hit on the back or anywhere else, only once? A. Yes, sir.

Q. How aften did you get called "scab," or those vile and indecent names?

Mr. Leahy: That is objected to as leading.

The Court: I don't think that is necessarily leading, to ask how often she was called a "scab."

Mr. Holland: Q. What do you say about that, how often have you called those vile and indecent names?

A. I don't know; I never kept track.

Q. But when you made the affidavit to the indecent names and the assualt, and those people hurling their indecencies at you, you told the truth, did you not? A. That is right.

Mr. Holland: That is all.

191 DOROTHY LEWIS, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. State your name? A. Dorothy Lewis.

Q. Your name is Dorothy Lewis?

A. My name is Dorothy Lewis.

Q. Talk as loud as I do so we can hear you.

A. I can't do it.

Q. Where are you employed, Miss Lewis?

A. Down there at Thirteenth and Chestnut.

Q. You work for Herkert & Meisel? A. Yes, sir.

Q. How long have you worked there? A. Six weeks.

Q. Six weeks? A. Yes, sir.

Q. Were you working there after the 10th of April, of this year? A. Yes, sir.

Q. In going to or from your work has anybody bothered you up around there? A. Yes, sir.

Q. When was that?

A. Well, I don't remember just what day it was, but it was a woman stopped several times—one of the strikers.

Q. Was it the same woman all the time?

A. No, sir—there was two different women.

Q. How close were they to the factory of Herkert & Meisel at the time they stopped you?

A. Well, one time they was on Thirteenth and Market, and the other time they was right down on the corner.

192 Q. And Thirteenth and Market is about twenty-five feet from the alley leading into the southern entrance to Herkert's, the wagon entrance, is it not?

A. Yes, sir.

Q. And you met them, you say, as you got off the car?

A. No, sir, I was not on any car. I was just walking.

Q. You were walking and when you came to the alley twenty-five or thirty feet north of Market Street, at Herkert & Meisel's, you met this woman there?

A. No, sir, it was on Thirteenth and Market.

Q. It was on Thirteenth and Market?

A. Yes, sir.

Q. At the corner?

A. Yes, sir.

Q. What did she say to you?

A. Well, she told me not to work there. I told her I had to work some place. She said I could go down to the box

foctory and get a job. I told her I couldn't, because they was not needing anyone down there. She said I should not work there, and if I did that she was going to take me out and give me a good beating, if I worked down there.

Q. That is one time. Were you bothered ofter that?

A. Yes, sir.

Q. Where?

A. Right on the corner from the factory, as I was on Thirteenth and Chestnut.

Q. What happened then?

A. Well, she told me that—she says, "Don't you know there is a strike on there?" I says, "Yes." I says, "I can't help it." I says, "I have got to work," and she says, "No, you musn't work there." She says, "You musn't scab." I told her I was no scab, and I never was—

Q. Was that the same woman?

A. No, sir, a different one.

Q. A different woman?

A. Yes, sir.

Q. Did you have any other experience there?

193 A. Yes. Another time I met this first woman I was telling you about. She stopped me again and commenced to fuss with me. I asked her if she wanted to fight, and she said no, she didn't want to fight. I told her then, what was she talking about, what was she talking about. She said she just wanted me to plainly understand that I had to quit working there. She said I just only had two or three days' work, anyway, and she said that they is coming back there and, "You won't have any work any longer." I says, "Well, I will work as long as I can."

Q. That is three times that you were bothered, is it?

A. Yes; and then once by a man.

Q. What did the man say to you?

A. He says, "Hey there. Don't you know there is a strike on there? You must not go up there." That was in the morning. I said, "What do I care about a strike? I have got to work." He says—I hate to say what he did; anyway, it was an ugly name.

Q. Did you consider it a vile name?

A. Oh, yes, sir.

Q. Did you consider the name reflected upon you in any way, reflected on your virtue?

A. I certainly wouldn't like to speak it, because I belong to a church.

Q. I won't ask you. I don't think it is necessary, Mr. Leahy, to be any more specific?

Cross Examination.

By Mr. Leahy:

Q. This is Miss or Mrs.?

A. Well, I have been married, yes, sir.

Q. Are you seperated from your husband now?

A. Through death; he is dead.

Q. I see. That is all right. You are working at the factory?

A. I am working there every day.

Q. Are you a member of this Labor Union?

194 A. No, sir.

Q. Of the Local Lodge?

A. No, sir, I don't belong to any union?

Q. Oh, you did not go out on a strike, did you?

A. No, sir, I was not working there at that time at all.

Q. You were not working at that time?

A. No, sir.

Q. You were brought in to fill a vacancy by the strikers leaving the employment, were you not?

A. Well, I am running a machine, but I was not running at the time at all.

Q. You are one of the emergency helpers brought in during the period of the strike?

A. Well, they hired me after the strike.

Q. You say you were first accosted at Thirteenth and Market Streets?

A. Yes, sir.

Q. That is one block south of where the factory is located on Chestnut Street?

A. I think so. It is Thirteenth and Market.

Q. Just opposite the City Hall up there?

A. Yes, sir.

Q. And this lady, what was she doing at the time?

A. I don't know what she was doing at the time.

Q. Walking along the Street?

A. Why, she just stopped me.

Q. Did she know you? A. Sir?

Q. Did you know her or she know you?

A. No, sir, I don't know her. She just knew I was working there.

Q. Did she work at that factory, do you know, where you worked?

A. She said that she used to work there. She was one of the strikers.

Q. How do you know that?

A. Well, she said she was.

Q. You did not know her name, did you?
A. No, sir.
Q. Or never remember seeing her at that—
195 A. Oh, no; she didn't work there while I worked there.
Q. Did you ask her name?
A. No, sir.
Q. She told you at that time, on Thirteenth and Market, a block away from where this factory was located, that there was a strike on and that you ought not to go to work there?
A. She said I musn't work there.
Q. She told you there was a strike on?
A. Yes, sir.
Q. After she told you there was a strike on she said you should not work there?
A. Yes, sir.
Q. Nevertheless, you went down and went to work; you told her that you would continue to work there?
A. Yes, sir.
Q. Would you know this woman if you saw her again?
A. Yes, sir.
Q. You don't see her in the Court room, do you?
A. No, sir.
Q. Where did you work before you went to work for the Herkert & Meisel Company?

Mr. Holland: I object to that.

The Court: I don't see the relevancy of it.

Mr. Leahy: I won't press that.

The Witness: Well, I will tell you; I was working at the Red Diamond Overall Factory at Eighteenth and Pine.

Mr. Holland: I think the evidence is pretty plain that she is a working girl, your Honor.

The Witness: Oh, yes; I have to work for a living, that is true.

Mr. Leahy: You haven't seen this woman that spoke to you, since?

A. Oh, yes; I have seen her several times and told her she musn't stop me any more unless she wanted to fight. I told her if she wanted to fight me she could stop me
196 again, but I was tired of being molested.
Q. The first time you said she stopped you was at Thirteenth and Market?

A. At Thirteenth and Market.

Q. And you then saw her again, or she stopped you again, at Thirteenth and Chestnut?

A. Yes, right at the corner.

Q. And that time you asked her if she wanted to fight?

A. Yes, sir.

Q. You were ready to have it out with her?

A. Yes—

Q. And ready to take care of yourself?

A. I would have tried to.

Q. Why did you ask her to fight with you?

A. Well, she was talking rough to me, calling me a "scab"

Q. You said you were ready to fight?

A. No, I didn't tell her I was ready. I asked her if she wanted to fight.

Q. You asked her if she wanted to fight?

A. Yes, sir.

Q. Is not that the usual preparation for fight?

A. Well, I was not fixed for her unless just my hand, I didn't have nothing.

Q. You were ready for trouble. Did you say anything to her at that time?

A. I just told her that she must not call me a "scab"; that I wasn't.

Q. Did you call her any names?

A. No, sir.

Q. I don't know—you say you don't know that woman, or wouldn't know her again, would you?

A. I would know her face if I would see her.

Q. Was there anybody with her the first time she was there?

A. No, sir.

Q. Or the second time?

197 A. No, sir.

Q. And you didn't see any great numbers of people around there, did you?

A. I seen several people, but I don't know who they was.

Q. You couldn't tell who they are. You were never bothered outside of that instance you have mentioned?

A. Yes. Today I went to the restaurant to get me a cup of—

Q. I mean at the factory.

A. Oh, no; I was not bothered in the factory at all.

Mr. Leahy: That is all.

198 JOE RUSSELL, a witness of lawful age, being duly produced, sworn and examined testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Joe Russell.
Q. Where do you live? A. 1239 South Third.
Q. That is in the city of St. Louis? A. Yes, sir.
Q. Where are you working? A. P. C. Murphy.
Q. At Murphy's place, the Murphy Trunk Company?
A. Yes, sir.
Q. Up around Thirteenth and Papin? A. Yes, sir.
Q. How long have you worked there?
A. I have worked off and on the last thirty-five years.
Q. You have worked off and on for the last thirty-five years? A. Yes, sir.
Q. Now, were you working there on the 10th day of April and since that time? A. Yes, sir.
Q. Have you had any trouble since this strike was inaugurated, with the pickets who were picketing that plant?
A. Going home the 26 of April, on Twelfth and Chouteau Avenue, a fellow named Jack Stinson—
Q. Jack Stinson? A. Yes, sir.
Q. Do you know him? A. I know him, yes.
Q. What was he doing there?
A. Working in the shipping room.
199 Q. What? A. Working in the shipping room.
Q. Was he picketing the plant at the time?
A. No, he was a block away from there.
Q. Where was that? A. Twelfth and Chouteau.
Q. Twelfth and Chouteau Avenue? A. Yes, sir.
Q. About a block away, you say, from the factory?
A. Yes, about a block away from the factory.
Q. What did Stinson say to you, if anything?
A. He called me—
Q. Did he call you a vile name?
A. He called me a "scab B....."
Q. That is enough. What did you say to him, anything, after that?
A. I never said a word and he turned around and said, "I will be down to your house."
Q. He said he would go to your house?
A. Yes; in a vicious looking way he said, "I will go down to your house."
Q. He said that in a vicious looking way? A. Yes, sir.

Q. Murphy's factory is a small block north of Chouteau, is it not, on Papin Street— A. A small block—

Q. —and there is a big vacant lot that used to be an old dump, leading to the Twelfth Street Bridge? A. Yes, sir.

Q. And Murphy's factory is just one block through that dump to the bridge?

A. Yes, the factory on Thirteenth and Pine.

Q. When you were leaving Murphy's factory what road did you take to go home: did you go along that old path that is used as a roadway? A. Yes, sir.

Q. And you got the block down to Twelfth—

A. Somewhere.

Q. Which way were you taking it the time Stinson called you vile names? A. I was going over the old dump.

Q. You had taken that route that evening?

200 A. Yes, sir.

Cross Examination

By Mr. Leahy:

Q. Mr. Russell, you say you are working for thirty-five years with the Murphy Trunk Company? A. Yes, sir.

Q. In the shipping department?

A. No, sir, only packer and general round—

Q. You are a leather worker? A. No, sir.

Q. You are not a member of this Local Union?

A. No, sir, I have no occasion to go out.

Q. Was Jack Stinson working in the shipping department?

A. Yes, at the time. He belonged to the Union.

Q. Doing the same kind of work that you were?

A. Doing the same kind of work that I was, yes, sir.

Q. He is not a leather worker? A. No, sir.

Q. He had nothing to do with the Union?

A. He belonged to the Union. I say, he belonged to the Union, but he was only working in the shipping room.

Q. He was only working in the shipping room. He was not doing any leather work of any kind, was he?

A. No, sir.

Q. Did you ever belong to the Union? A. No, sir.

Q. Then you don't know whether Stinson ever belonged to the Union or not, do you?

A. He went out on the strike.

Q. I am asking the question now, sir: Do you know whether he ever belonged to the Union or not?

A. All I know is he went out on a strike.

Q. Answer yes or no, please. The question is specific. Do you know whether Stinson was a member of
201 Local Union No. 66, United Leather Workers' International Union Local Lodge No. 66; do you know if he was a member of that union or not?

A. Not at that time.

Q. You don't know. Now you had some personal differences with Jack Stinson, yourself, did you not, before this?

A. Oh, he didn't like me to work in the shop.

Q. You and he were bad friends? A. Yes, in the shop.

Q. You had some controversies before this time?

A. In a shop, yes.

Q. In a shop? A. Yes, before the strike.

Q. Did you cause him to be dismissed from that place?

A. No, sir.

Q. At the time that he met you, this was on Chouteau Avenue?

A. At the time that he met me, this was on Chouteau Avenue.

Q. A block south of where that factory is on that street?

A. Yes, sir.

Q. Where were you at that time?

A. I was on my way home.

Q. Were you walking home? A. Yes, sir.

Q. On what street?

A. After four-thirty, after quitting time.

Q. Was he on the street at that time, too?

A. He was standing on the corner.

Q. You say he stopped to talk to you, stopped you?

A. Stopped me as I went on. Hollered at me.

Q. Did you say anything to him before that? A. No.

Q. Are you sure you didn't?

A. I didn't say anything.

Q. He said he was going to be down to your house?

202 A. That is what he said, "I will be down to your house."

Q. In a vicious way?

A. I got kind of scared. He scared me up; he was a big fellow:

Q. You went back to your home that evening?

A. No: I went to another place that night. I got scared, I got nervous. I didn't stay home that night.

Mr. Leahy: That is all.

Re-direct Examination

By Mr. Holland:

Q. You say he was working there and went out with the strikers? You stated that? A. Yes, sir.

Mr. Holland: That is all.

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203 JAMES LAWRENCE, a witness of lawful age, being produced, sworn and examined, testified on behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. James Lawrence.

Q. Where do you live? A. 3043 Easton.

Q. Where do you work? A. P. C. Murphy.

Q. How long have you worked there?

A. It will be two weeks next Tuesday.

Q. Have you noticed any pickets around the factory of the Murphy Company? A. Yes, sir.

Q. Have you been intercepted by any of those men or women? A. Yes, sir.

Q. When? A. Well, last Wednesday.

Q. Last Wednesday?

A. Yes, on any way from my employment, at four-thirty, down about Twelfth and Papin, about this bridge, under the bridge.

Q. How far distant is that from Murphy's entrance, one block, is it? A. One block.

Q. What happened there?

A. They stopped me and they used vile language.

Q. How many were in the crowd? A. Four.

Q. Four? A. Yes, sir.

Q. I don't want you to mention the language, but what led you to believe that it was vile?

204 A. Well, they asked me where I was working. I told them I was working for the Murphy Trunk Company. They says, "Don't you know there is a strike on there?" I said, "Yes." They used a curse word says, "what are you working for?" I says, "I have to make a living," and they said, "all of you fellows (you know the rest) will get what is coming to you before the week is out." I told them they could give me mine now, if they wanted to. So I turned around and went on home.

That was adjacent to the factory, you say, at the end of the vacant lot where you go out? A. Yes, sir.

Cross Examination

By Mr. Leahy:

Q. Were you working at the factory the time the strike was declared? A. No, sir.

Q. You have been employed since that time to replace some of these strikers? A. Yes, sir.

Q. Are you a leather worker? A. No, sir.

Q. In what capacity are you employed? A. I am employed in the saw department.

Q. Were you a member of this local union? A. No, sir.

Q. Now, you said that there were three or four men, did you, that you met? A. There were four.

Q. These four men you met at Twelfth and Papin Streets?

A. Just under the bridge.

Q. On the bridge? A. Under the bridge.

Q. That was quite a way from the factory?

A. Yes; just across the vacant lot.

Q. What? A. Just across the vacant lot.

Q. It was a block away from the factory?

A. Yes, sir.

205 Q. You didn't know any of these four men, did you?

A. No; I didn't know their names.

Q. And you don't know whether these four men were members of the union or not? A. No, sir, I do not.

Q. You don't know anything about that. I guess that is all.

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206 CHESTER THOMPSON, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiff as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Chester Thompson.

Q. And where are you living? A. East St. Louis.

Q. Where are you working? A. Murphy Trunk Company.

Q. You are employed by Murphy, are you? A. Yes, sir.

Q. Where, at Thirteenth and Papin? A. Yes, sir.

Q. Have you had occasion to meet any of those people who are picketing that plant down there, since you went to work there? A. Yes, sir.

Q. When? A. I met them Monday evening.

Q. Do you mean at the end of that lot there?

A. Right near the bridge.

Q. Were you coming into the factory or going away?

A. I was going away to get my lunch.
Q. They met you at the alley as you came by the vacant lot on to the bridge? A. Yes, sir.
Q. What did they say to you, if anything?
A. They said about eight hundred was coming down there that evening and beat something out of us.
Q. Now, that somethig they spoke about you don't want to mention in polite company, you don't want anybody to hear that, do you? A. No, sir.

207 Mr. Holland: That is all.

Cross-Examination

By Mr. Leahy:
Q. Just where were you worknig—were you working in the factory before the strike? A. No, sir.
Q. You went to work in the factory since the strike, did you? A. Yes, sir.
Q. When did you go to work?
A. I started last Saturday, a week ago.
Q. Speak up so I can hear you, like a good boy.
A. Saturday a week ago.
Q. And you have been going to work every day since?
A. Yes, sir.
Q. And this was the only occasion on which you were stopped by anybody? A. Yes, sir.
Q. The only time? A. Yes, sir.
Q. You said there were two boys— A. Three.
Q. Three? A. Yes, sir.
Q. Met you about a block from the factory, on the bridge?
A. Yes, sir.
Q. They were boys like yourself, young boys?
A. Yes, sir.
Q. How old are you? A. Sixteen.
Q. They were about fifteen or sixteen, were they?
A. They looked about sixteen or seventeen.
Q. You were never a member of the leather workers' union, were you? A. No, sir.
Q. And you didn't know anybody that was a member?
A. No, sir.
Q. You had never seen these boys before? A. No, sir.
Q. They were unknown to you?
A. Yes, sir.
208 Q. You didn't know whether they were members of the Union or not?
A. They said they worked for Murphy.

Q. What?

A. They said they worked for Murphy; they said they worked at the Murphy Trunk Company.

Q. But you don't know whether they were members of the Union or not? A. No, sir.

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209 ABLE BRADLEY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Able Bradley.

Q. Where do you live? A. 1715 Market.

Q. Are you working at Murphy's? A. Yes, sir.

Q. Have you had occasion to notice any of those men who are picketing down around Murphy's plant?

A. Well, there is—they stopped me on Fourteenth and Papin one noon.

Mr. Leahy: (To the witness) Talk up so we can hear you.

The Witness: I say, there was three of them stopped me on Fourteenth and Papin one noon.

Mr. Holland: Q. You say three of them stopped you on Fourteenth and Papin one noon? A. Yes, sir.

Q. That is right by Murphy's factory, is it not?

A. Yes, sir

Q. The front end of the factory, on Fourteenth Street?

A. No, sir, it is up one—

Q. On the west side of the factory? A. Yes, sir.

Q. How many men were in that crowd that stopped you?

A. Well, there was three in the crowd and one done the talking.

Q. What did the fellow say who did the talking?

A. Wanted to know where I was working, and I told him.

Q. What did he say then?

A. He wanted to know if I didn't know there was a
210 strike on, and I told him I did.

Q. What did he say? A. Well, he cussed me.

Q. What? A. He swore a little.

Q. What did he say? If it is anything vile don't mention it. Did he curse or use vile and indecent language?

Mr. Leahy: Don't lead your witness. Ask him what he said.

The Court: He may answer.

The Witness: He just cussed about me working there, that is all.

Mr. Holland: What else did he say to you; did you tell him you would quit, or anything of that kind?

A. Yes; I told him I was going to quit.

Q. What did he say to that?

A. He said it was a good thing I was.

Q. What day did that happen? A. Last Wednesday.

Cross-Examination

By Mr. Leahy:

Q. Were you working in the factory at the time of the strike?

A. No, sir.

Q. You went to work afterwards. When did you go to work there? A. Sir?

Q. When did you go to work there?

A. Today a week ago.

Q. You have been working for a week? A. Yes, sir.

Q. Was this the only incident that occurred during that time, of your being stopped? A. Yes, sir.

Q. These three men that stopped you, that was about a block away from the factory, was it? A. In the same block.

Q. In the same block. And they said—did you know these men?

211 A. No, sir, I did not.

Q. You had never met them before? A. No, sir.

Q. You were never a member of Local Union No. 66 of the leather workers, were you? A. No, sir.

Q. And you didn't know any of those men? A. No, sir.

Q. These three men were strangers to you?

A. They were.

Q. You had never met them before? A. No, sir.

Q. Did you see them in the Court room today, have you seen them?

A. Well, I don't believe I could say who they are or not. I don't know them.

Q. You haven't seen them in the Court room today, you haven't met them since that time, have you? A. No, sir.

Q. When did you first tell about this conversation that you had with these three men, when did you first mention that?

A. Well, I first mentioned it to my brother when I went home. Then I told another fellow that was working with me and he told the boss.

Q. You never told the boss yourself?
A. No, sir, not until he told.
Q. You never made any complaint on your own account about it? A. No.
Q. You never told anybody, but you mentioned it to your brother and your brother told your boss, and then your boss asked you?
A. No, my brother didn't tell my boss.
Q. Who told the boss? A. The boy that I worked with.
Q. A boy that you worked with? A. Yes, sir.
Q. And then he came and talked about it, and you told him?
212 A. Yes, sir.
Q. These three men, you say, that talked to you, they told you there was a strike on? A. They did.
Q. And asked if you were going to quit?
A. Well, they didn't ask me if I was going to quit. They wanted to know why didn't I quit.
Q. And you said you were going to quit?
A. Yes, I said that.
Q. You didn't quit, did you, A. I haven't yet.
Q. You are still working there, aren't you; you are still working in the same employment?
A. Yes, I am working there.

Mr. Leahy: That is all.

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213 DEWNIS CHOCOLAS, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:
Q. What is your name? A. Dewnis Chocolas.
Q. Where do you live? A. 1927 Park Avenue.
Q. And are you working for Herkert & Meisel?
A. Yes, sir.
Q. At Thirteenth and Chestnut Street? A. Yes, sir.
Q. How long have you worked there?
A. About six weeks.
Q. Have you seen any pickets around there during that time? A. Yes, sir.
Q. Men going, walking up and down? A. Yes, sir.
Q. Did any of them ever talk to you? A. Yes, sir.
Q. What? A. Yes, sir.
Q. When, since the strike? A. Yes, sir.

Q. What did they say to you, if anything?
A. Get off the work, to get out of that place.
Q. Did you know any of those men; did you know their names? A. I don't know their names.
Q. You don't know their names? A. No, sir.
Q. Had you seen them around there more than once?
A. Yes, sir.
Q. How often? A. Thirteenth and Market.
Q. I say, how often had you seen them around the factory there? A. Across—
Q. How many times?
A. About three times every day. People every day, before the injunction.
214 Q. Was there anybody with you when those men stopped you? A. Yes, sir.
Q. Who? A. I don't know.
Q. There were other people with you? A. Yes, sir.
Q. Have they bothered you lately? A. Yes, sir.
Q. When was the last time? A. The 7th of May.
Q. The 7th of May? A. Yes, sir.
Q. Where were you at the time they bothered you on the 7th of May? A. Twelfth Street bridge.
Q. Twelfth Street Bridge? A. Yes, sir.
Q. How many men? A. I don't know; six or seven.
Q. Six or seven men? A. Yes, sir.
Q. What did they say to you on the Twelfth Street bridge?
A. To get off the work, not to come back to work any more.
Q. To get off the work, not to come back to work any more?
A. And then I say, "I am going Saturday to get my money, and I will come on Saturday and get my money."
Q. Speak loud. You say they told you to get out of that and not to come back any more? A. Yes, sir.
Q. And you said you would quit Saturday when you would get your money? A. Yes, sir.
Q. How many men were in this crowd of pickets that told you that? A. About six or seven.
Q. About six or seven men? A. Yes, sir.
Q. How—why did you tell them that you were go-
215 ing to stop Saturday? A. Get my money.
Q. Why did you tell them you were going to quit?
A. Well, they told me to get out of here.
Q. Because they told you to get out of there?
A. Yes, sir. When I came back to work he met me at Twelfth and Chouteau.
Q. When you came back to work he met you at Twelfth and Chouteau? A. Yes, sir.

Q. How many men met you at that time?
A. Six or seven.
Q. The same men? A. Yes, sir.

Cross-Examination

By Mr. Leahy:

Q. You said you were working in the Herkert & Meisel factory for six weeks? A. Yes, sir.
Q. Were you working there at the time of the strike?
A. Yes, sir.
Q. Were you working before the strike?
A. Not before the strike.
Q. You went to work after the strike was declared, didn't you? A. Yes, sir.
Q. And what line of work did you do? A. Sir?
Q. What did you do? A. Leather worker.
Q. Have you been doing that sort of work before?
A. Yes, sir.
Q. Were you ever a member of the Local Union of the leather workers? A. No.
Q. You never belonged to it? A. No, sir.
Q. You didn't know any of those men, did you?
A. No, sir.
Q. And you didn't know any of the men that you met on the bridge, did you? A. No, sir.
Q. Have you ever seen them before?
216 A. No, I have never seen them before.
Q. You didn't see them today, did you?
A. I don't know.
Q. You didn't see them in this Court room?
A. Some of them.
Q. Were you here at the time the case was called before?
A. Yes, sir.
Q. Did you see any of these men?
A. Yes, I see them, some of them.
Q. Do you see any of them now? A. I think they went out.
Q. You don't see any of these men in the Court room?
A. I see them today up here.
Q. You think they went out? A. Yes, sir.
Q. They are not there now? A. I don't know.

Mr. Holland: Q. You are not sure whether they are here or not?

A. No.

Mr. Leahy: Q. Did you see them go out?

A. Yes; I see them three times, yesterday and today. They went out. I see them up here.

Q. You are still working for the Herkert & Meisel Trunk Company? A. Yes, sir.

Q. You have been working there all the time?

A. Yes, sir.

Q. Have you been going to work every morning?

A. Yes, sir.

Q. And coming from there every evening? A. Yes, sir.

Q. And outside of these two times you were never spoken to except on these two occasions? A. Yes, sir.

Q. You came in peacefully and you went out peacefully and nobody said or did a thing to you? A. No.

Q. You made an affidavit, did you? A. Yes, sir.

217 Q. And you stated in that affidavit that by reason of the conduct and violent attitude of the strikers you have been in great fear of bodily harm and afraid to continue in the service of the said Herkert & Meisel Trunk Company: Is that true? A. Yes, sir.

Q. You are still in their employment, in the employment of the Herkert & Meisel people? A. Yes, sir.

Q. When these men met you and spoke to you on the bridge they told you there was a strike on, did they? A. Yes, sir.

Q. They told you that you should leave the factory?

A. Yes, sir.

Q. They said, "You know there is a strike on here?"

A. Yes, sir.

Q. And you should leave the employment? A. Yes, sir.

Q. That was all that was said at that first time?

A. Yes, sir.

Q. And then on the second occasion on which they met you how many were there? A. A. About six or seven, seven.

Q. Did you count them? A. Yes, sir.

Q. And these men spoke to you a second time, did they, and what did they say that second time?

A. The same thing.

Q. The same thing; that is, they told you that there was a strike on? A. Yes, sir.

Q. And you should quit. That is all that was said the second time? A. Yes, sir.

Q. No more than that. You don't know these men, and you don't know whether they were members of a union or not. That is all.

218 AL. BIRKENMEIER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Al. Birkenmaier.

Q. And your business?

A. I have been business agent of the United Leather Workers' Local No. 66.

Q. You are still a member of that organization, are you?

A. Yes, sir.

Q. And you are still business agent, are you?

A. Yes, sir.

[A.] Local No. 66 is conducting this strike, is it not, against these various factories around town? A. Yes, sir.

Q. And as such you are the executive officer, are you?

A. Not necessarily, no, sir.

Q. Who is the executive officer?

A. Well, we have an executive board and committees in general. They constitute sort of a working force, I would call it.

Q. And that executive force, I take it, in the various cities where your Union is interested, they take charge of the strike if there is one?

A. No, sir, I am talking about the local. You are getting away from what I am speaking of. Our International has nothing to do with the local affairs, only to a certain extent.

Q. I understand that Mr. Schilling is in the city during the progress of this strike and is in the city now, is he not?

A. Only to give us such advice, or suggest anything for the good of all.

219 Q. And he is one of what they call the national officers of that association? A. Yes, sir.

Q. Do you know a man named Stinson?

A. [That] is the name?

Q. Stinson? A. John Stinson?

Q. Yes. A. Yes, sir.

Q. Is he a member of your organization?

A. Well, if he is the same man, he is.

Q. He is a member of Local No. 66 of the United Leather Workers? A. Yes, sir.

Q. You have charge of the strike in a general way, have you not?

A. No, sir, not exactly. I have charge only of the Local's business.

Q. That is what I say. The local takes care of the surveillance that is kept over factories and places where trouble usually crops up, is not that true?

A. Well, it has a committee that has charge of those affairs. This committee has been appointed by the body in general, which takes care of those affairs.

Q. Who is on the committee in charge of the present strike?

A. Mr. Ehlenbeck, Kaysing and Mr. Smith, Mr. Burns, Walmen.

Q. Who employs the men to do picket duty at the various places? A. Who employs them?

Q. Yes.

A. We don't employ them; they do that as a sort of volunteer proposition.

Q. What is the method usually adopted to notify them what they are expected to do?

220 A. Well, the method adopted is a method that is carried on through our meeting. Any of our picketing from the time that this strike begun until now has practically been a voluntary proposition all the time, due to the fact that there are something like six hundred of our members employed otherwise, and we are so short of men in that capacity, those that could fill the bill of picketing at all, that we are just depending on the men that will volunteer to do it.

Q. Of course, you don't expect to put on six hundred pickets?

A. I am trying to give you the number of men, or something like the number of men that are still willing to do that kind of work.

Q. On the 10th of April, or the 12th, the day that those men began to picket actively, how many men were on the picket line at various places at that time if you know?

A. I can't tell you, for the simple reason that that has nothing to do with me whatever.

Q. In a general way you know how many pickets are usually assigned to the whole strike?

A. Well, to give you my opinion of how many was, or how many I think was, we, as a general rule, didn't expect any more than about two men for each shop, or three. That is my understanding from the way this committee has charge of affairs, and it has been a job to get that many men, a big job, because a great many of them went fishing and went on different kinds of trips, and things of that kind, and a great many of our men don't care for the job, in the first place.

Q. For the first few days you didn't have much difficulty in getting them?

A. For the first few days we didn't have much difficulty in getting them? I wouldn't say that there were any
221 pickets on the line whatever, for the reason that it was more of a curosity with the men in general to congregate around there to see what was going on.

Q. That is what I was going to ask. Probably I am in error in calling them pickets. You may call them something else. I don't know. But how many men of all classes, belonging to your unions, to your knowledge, were around those factories?

A. I couldn't answer you on my knowledge, to any knowledge of that. I couldn't tell you whether there was one man there every day, because my position is such that it keeps me busy at all times and I don't care anything about the pickets.

Q. It is the custom to pay the men that do picket duty, is it not?

A. No, sir, not in our local. There has never been a man earned a five cents for picket duty, and I am the one that pays all money out of the Local.

Q. You don't pay the pickets at all?

A. No, sir, absolutely not. That is one of the reasons why our men are really backward in doing picket duty, because there is nothing in it.

Q. I show you a list of names: Will you read them off, and point out any of those men that belong to your organization? A. Shall I read them out?

[A.] Yes, if you will.

A. A. M. Reuter, Al. Birkenmaier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little—that "Little" is not right.

Mr. Leahy: What you want him to do is to read them over and say who are members?

Mr. Holland: I think that will do.

222 Mr. Holland: Q. Little, you think that means?

A. John Leshner, Charles Morgan, Paul Berry, Edward Schilling—does not belong to the Union.

Q. He is the International man.

A. Ambrose Kuntz, Walter Bechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, John Perry,—John Perry I know of no J. Perry. We have a B. Perry; John Remstedt, Charles Reuben, Henry Schnitze,

Benjamin Schnitze, Charles Tadesco, Fred Teutschert, Ray Watke, Walter Webber, John Zimmermon, Herman Dieckhorner, Joe. Kuhn, William Balmer, Robert Ginner, Tom Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Steve Zoeller, Tony Sanson, Annie Stecker. Then there is Sylvester Schnitze, Gus Henninger and George Wenk.

Q. Sanson: Is that another that you say belongs?

A. They are all there—there is Kaysing—

Mr. Leahy: What is that paper? (Indicating second paper)

Mr. Holland: I beg your pardon. I am not going to introduce it in evidence. It is merely to refresh his memory.

The Witness: (Reading from list) Charles Kaysing, Ehlenbeck, Gruns, Louis George, H. Laskowitz, Nic Pouls, John Smith, L. Burg, A. Oglesby, N. Rehen—

Q. R-e-h-a-n, Rehan, is it not?

A. No, sir; I don't know him.

Q. You don't know Rehan?

A. William Hoffman, Sander—I don't know him; F. Stein, Robert Klyberger, George Feldkamp, N. Litke, George Slagle, and Anna Howard. They are all members of our Local, with the exception of those two.

Q. Who are they?

A. N. Rehan and no initial Sanders. Which one—

223 Q. Frank Sanders. That is all.

Cross-Examination

By Mr. Leahy:

Q. I believe you are the business agent of the Local Union? A. Yes, sir.

Q. And you were at the time of the strike? A. Yes, sir.

Q. Were all the trunk makers that walked out at the time of the strike in all these various factories, members of the Local Union?

A. Well, I could say that ninety-nine per cent of them were.

Q. Members of the local. I understand you have a contract that expired? A. Yes, sir.

Q. And that there were some negotiations carried on between the employes, or the representatives of the employes and the employers, and they failed to come to an agreement and it resulted in a strike?

A. Yes, sir.

Q. Now, the vote in which the strike was declared, I presume was taken in the regular way?

Mr. Holland: That is objected to.

A. Yes, sir.

The Court: He may answer. Objection overruled.

A. I say yes; that is, it depends on what you call the regular way. It was taken in our regular way.

Mr. Leahy: Q. In the way provided by the rules of your organization? A. Yes, sir.

Q. These were complied with? A. Yes, sir.

Q. And the majority vote taken, the vote taken and the majority decided to strike?

A. Yes, that was done according to these regulations.

224 Q. That was at the meeting of the employes of these various companies, the plaintiffs in this case, and at a meeting of the Local?

A. Yes, sir.

Q. Of which they were members?

A. Yes, sir.

Q. Mr. Schilling is your national officer?

A. Yes, sir.

Q. I think you were asked if Mr. Schilling was in the city just now: Where is Mr. Schilling?

A. Mr. Schilling is in Chicago, at the present time, very ill; he is almost dead.

Q. Has he been ill for a considerable time?

A. Yes, he has been down and out for practically a year.

Q. This matter, I understand, is a matter of the Local Union, that is taken up by members of the Local Union?

A. Yes, sir.

Q. Were you present at any meetings of the local at which the men were selected to do any picketing; do you know anything about that?

A. At meetings that men were selected?

Q. Of the local?

A. Yes. That men were selected.

Q. Yes.

A. There was never a meeting where any men were selected. It was always a volunteer proposition.

Q. You know about instructions given to your pickets?

A. Yes, sir.

Q. I will ask you what were these instructions?

A. Our instructions at all times have been positively to stay away from trouble of all kinds.

Q. Not to resort to any violence of any character?

A. Absolutely. We don't sanction a movement of that kind.

Q. Did you, yourself, ever tell any one of these men
225 that they should try forcibly to prevent anybody from being employed by any one of these companies?

A. Say that again.

Q. I say, did you yourself try—did you ever tell any of these pickets, any of these men that did picket duty, that they should use any force or violence or anything but peaceful persuasion?

A. I have always been very particular to encourage them to do what was right at all times.

Q. I understand that you do the clerical work for the organization?

A. Yes, sir.

Q. You do not have anything to do with instructions, or anything of that kind at all?

A. No, sir.

Mr. Leahy: That is all.

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226 The Court: Gentlemen, we will have to suspend the further hearing of this case until ten o'clock on Tuesday, June 1, 1920.

Mr. Holland: The order hitherto issued will be in full force?

The Court: Yes.

Mr. Leahy: I would like to call your Honor's attention in that connection to the restraining order that already has been issued. There are some portions of that that I can see ought to remain in force until this whole matter is disposed of.

The Court: It will be ordered that it will remain in force.

Mr. Leahy: But if you will permit me to call your Honor's attention, so as to find out just what can be done. The reason I make that request at the present time is in order that these men may know their rights and not violate the law.

The restraining order restrains all picketing. I take it that means picketing where force or unlawful means are resorted to, and not the right to go there to picket except, of course, they assemble there in large numbers.

The Court: The law has been written and rewritten time and again, times innumerable. Judge Killits, from whom I quoted in the Kinloch case, stated in very clear terms (which I think any one who can read the English language will understand) that can and what cannot be done.

The test I have set out in that case, and the test that has met the approval of the Courts in all the cases, is that
227 neither a man nor a union can do anything in time of a strike, that the same man could not do when a strike was not on. If men could go down there in numbers and stand around when there was no strike, without disturbing the peace, then they could go down there and stand around when there is a strike, but we all know that they wouldn't go down there, stand around and talk, accost people and threaten them, curse them, and call them "scabs;" follow them home and threaten to knock their heads off, or their "blocks" off, if no strike were on.

I couldn't state it any plainer than I have stated it in the Kinloch case; I couldn't state it any plainer that Judge Treiber has stated it in the Kroger Grocery Company case, or any plainer than Judge Killits has stated it in the case of Stevens versus Ohio State Telephone Company. There ought not to be any difficulty for any lawyer who can read English even fairly well, in advising his clients what they can or cannot do. There is no use for me to reiterate those things.

They can go down there as pickets for the purpose of ascertaining what is going on. They cannot go in numbers so as to intimidate by force of numbers. If forty men went down there, or even ten men went down there in a bunch, and stood around the corner, I take it that is too numerous a number; that that would intimidate and menace by the very fact of the presence of numbers, whether they opened their mouths or not. The law contemplates that they may gather information, but it does not take forty men to get information.
Two men can get information just as well as forty or
228 a hundred men.

Mr. Leahy: The reason I mentioned it is because in this restraining order they are restrained from picketing—

The Court: The very word "picket" as used, denotes and carries with it the idea of picketing in an unlawful way. I don't think any court has ever said, and I have never said, that one or two men could not go down there for the purpose of obtaining information, to find out whether the factory was

operating or not; to find out how many men it was operating with, what the general conditions are; and go back, if he wanted to, and report to his union. That can be done, but that is about all that can be done. That, in my opinion, is all that is necessary to be done. Any other thing, any more men, any other acts, smack of the idea that something unlawful is intended, and the inference is to be drawn that it is intended, from the fact that there is being used an unnecessary number of men to get the information and ascertain the facts that I have stated.

Mr. Leahy: I don't think there is the slightest room to not throughly comprehend your Honor's stand, or the opinion that that was rendered here. It is plain to everybody. It is particularly plain to me because it drew the line between what was lawful and what was unlawful, by referring to what a man could do before a strike and he could do the same thing after the strike. I take it, under the Clayton act, there was embraced in that the act of peaceful persuasion; that a
229 man had the right to inform a man that there was a strike on, but not to use violence or threats, or anything of that kind. As long as he made simply the statement, under the Clayton act, conveying that information, and no more than that, and stop right there, that he was not violating the law. Of course, if they assemble in large numbers I can understand then the force of your Honor's reasoning; they ought not assemble in such large numbers, because numbers themselves would be sufficient to terrorize and frighten people going into that place of employment, and interfere with the proper conduct of the business, but of there were merely two or three that went down there, and, within the purview of the Clayton act, didn't do anything, resorting to violence, or anything of that kind, but merely pointed out to the persons that worked at that factory, that there was a strike on—using, in other words, what is known as peaceful persuasion, and did not overstep the limit, I take it that they are not violating the law.

The Court: I have written on it, and the other courts which I have mentioned have written on it. I have said all I can say about it. The restraing order will be continued in full force and effect until further hearing.

At this point an adjournment was had until June 1,1920, at ten o'clock A. M.

230 Met pursuant to adjournment as above, on June 1, 1920, at ten o'clock A. M.

Present: Same parties as before.

The following proceedings were had:

Mr. Leahy: If your Honor please, one of the defendants named in the bill of complaint, John Smith, has died since the institution of this suit. I want to call the Court's attention to that fact.

The Court: Let the records show the death of one of the defendants, John Smith, being suggested and not denied, suit as to him abates.

AL. BIRKENMEIER, recalled, testified in behalf of plaintiffs as follows:

Direct Examination.

By Mr. Holland:

Q. You were sworn Saturday in this case?
A. Yes, sir.
Q. You said you had charge of all the funds of Local No. 66?
A. Yes, sir.
Q. And you pay out all money that is paid out locally?
A. Yes, sir.
Q. Now, could you state to the Court if you know what financial condition of Local No. 66 is at the present time, approximately?

Mr. Leahy: If the Court please, I don't think that is material to any issue in this case.

The Court: I do not see the materiality of it, Mr. Holland.

Mr. Holland: We allege that those people are insolvent, and are of very small means. If it is admitted that they are insolvent, as we allege, or men of small means, as we allege, and we have no recourse at law of that organization. I
231 doubt very much whether an organization as a voluntary organization, not incorporated, can be brought in as a defendant at all in a case of this character. The facts are here before the Court.

The Court: I will let him answer for the reason suggested by Mr. Holland, that is, for the purpose of making formal proof of that allegation in his petition. Out of an abundance

of caution it may be wise to do it. I will overrule the objection.

Mr. Holland: Q. Can you state to His Honor the financial condition of Local No. 66 at the present time?

A. At the present time I couldn't give you a definite answer on that, but at the last check up, that is, the auditing committee comes in and checks up the books, and it showed a balance on hand of twenty-seven hundred dollars.

Q. How much?

A. Twenty-seven hundred dollars.

Q. When was that check up made?

A. On the first of March.

Q. What?

A. The fifteenth of March.

Q. That is how long ago, about two months and a half?

A. Yes, and over—about two months.

Q. Since that time out of that twenty-seven hundred dollars you have been paying out what you call benefits for the people on strike, and all of that?

A. No, our benefits don't come out of that.

Q. From where do your benefits come?

A. From the International.

Q. What has been taken out of the twenty-seven hun-
232 dred dollars; has anything at all been taken out of the twenty-seven hundred dollars?

A. Yes, we have incidental expenses.

Q. Could you give the court an idea, approximately, of how much is left of the twenty-seven hundred dollars, if any?

A. I judge two thousand, now.

Q. You think you have two thousand dollars in the treasury now?

A. Yes, sir.

Q. That would cover it?

A. Yes, sir.

Q. That is all you have in the treasury, is it?

A. That is all we have at present. Of course, our income continues right along and I can't state just definitely what we have and what we haven't, because there is money coming in.

Q. You haven't any ten or five thousand in the treasury have you?

A. I told you that we have about two thousand dollars.

Q. How about yourself? Have you any property?

A. No, sir.

Q. You are pretty well acquainted with all those men who are members of your Local?
A. Yes, pretty well.
Q. Are they men of large means, or small means, could you tell the Court?
A. Well, they are working people, that is all I can say.
Q. They are working people? From what you know of them, do you think that any of them could be good for a judgment for twenty or thirty or forty thousand dollars?
A. Tell me that again.
Q. Do you know if any of them, from your knowl-
233 edge of their financial condition, would be good for a judgement of ten thousand dollars, twenty thousand dollars, thirty thousand dollars, or any large amount.

Mr. Leahy: That is objected to for the reason that Mr. Holland in asking that question assumes that the complainants are going to get a judgement in this case, and I think that assumption is a very violent one.

The Court: I don't think that assumes that. It is merely a circumstance to show the financial condition.

Mr. Holland: Q. Do, you know any man in the organizatoin that is good for a judgement of even ten thousand dollars, of your own knowledge?
A. No, I don't know of any.

Mr. Holland: You do not. That is all.

Mr. Leahy: That is all.

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234 JOHN A. MEISEL, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs, as follows:

Direct Examination.

By Mr. Holland:
Q. What is your name?
A. John A. Meisel.
Q. You live in the City of St. Louis, do you?
A. Yes, sir.
Q. And you are in business here?
A. Yes, sir.
Q. What is the style of your concern?
A. Herkert & Meisel Trunk Company.
Q. One of the complainants in this case?
A. Yes, sir.

Q. How long has your concern been in business in this City, Mr. Meisel?

A. Thirty odd years.

Q. How long?

A. Thirty odd years.

Q. What is your investment up there, approximately?

A. Seven hundred thousand dollars.

Q. How much business do you do annually, or have you done in the last year or two?

A. In the last year we did a million, nine hundred and fifty thousand dollars.

Q. How much?

A. A million, nine hundred and fifty thousand dollars.

Q. A million, nine hundred and fifty thousand dollars last year?

A. Yes, sir.

Q. Where do you sell your goods?

235 A. All over the United States, in Mexico and Cuba.

Q. You ship goods in interstate commerce, then, do you? A. Yes, sir.

Q. What is your position with that Company?

A. President of the Company.

Q. Were you president on the tenth day of April, this year?

A. Yes, sir.

Q. Do you remember what happened at your factories, if anything, on that date?

A. Well, the strike was called and all of our men walked out, virtually all of them.

Q. And of your men walked out? A. Yes, sir.

Q. Could you give the Court approximately the amount of your loss? I don't mean to the dollar at all—

A. Since then, up to the present time?

Q. Yes. By reason of the fact that you were not allowed to ship in interstate commerce.

Mr. Leahy: That is objected to for this reason: That there is no evidence up to the present that there was any attempt on the part of these defendants to prevent interstate shipment whatever. On the contrary, the evidence shows directly opposite to that.

The Court: I will hear it and determine it for you later. I overrule the objection for the present.

To which ruling of the Court, the defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. What do you figure your loss was
236 financially? A. Fifty to sixty thousand dollars.
Q. What was the reason—

(To the Court) I will put this question, you Honor, subject to the objection.

Q. What was the reason you could not ship your goods in interstate commerce since the tenth of April?

Mr. Leahy: That is objected to as calling for a conclusion.

The Court: Yes. Let him state the facts.

Mr. Holland: Q. Have you shipped your full amount of goods, or any amount of goods, since the tenth of April, in interstate commerce? A. No, sir.
Q. What happened to prevent you from shipping your goods in interstate commerce?
A. The men going out on a strike.

Mr. Leahy: I move that the answer be stricken out. The men had a just right to go out on a strike. They had a perfect right to go out.

Mr. Holland: That is admitted, but there is evidence here—

Mr. Leahy: One moment. They are not responsible for any loss that might arise from any action taken by them which was perfectly legal; they are only responsible for such loss as was caused by any illegal conduct—if their conduct was illegal, and that is a condition precedent to the fastening of liability upon them for what might have ensued. Suppose these men left the factory and the inquiry ensued as a result of that: If they were justified in leaving it, they wouldn't be responsible for any of these injuries.

237 The Court: Yes, in the main that is absolutely true.

The plaintiffs here cannot charge up against the defendants any loss, even in interstate commerce, which accrued from the mere fact that the men quit and went out, and as a consequence thereof they were unable to get other men to take their places, unable to fill their interstate orders, or to make the goods, rather, with which to fill those orders, and therefore a loss ensued. Any loss arising from these things I just stated cannot be charged up aginst the defendants in this case. Whether the two things cannot be tied together by the presence of a conspiracy (if I should find that there was one) is wholly a different question. That is the

only theory upon which evidence of this sort is admissible. Other things being equal, in short, the defendants here cannot be charged up with any loss which occurred merely from the fact that they quit, and by reason of their quitting plaintiffs didn't have hands, and couldn't get hands, enough to make the goods to fill the interstate orders. There may be something left in the case, of course, upon the question of a conspiracy. I will look into that question for you. The men had a right to strike with or without excuse. I will admit it now, with the thought that I have stated in mind.

To which ruling of the Court, defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. When those men walked out on the tenth did you proceed to try to employ other men, or other women? A. Yes, sir.

238 Q. What happened to your business at your factories and to the people whom you had employed to take the places of those men that walked out subsequent to the tenth?

A. Well, we advertised for help and got them in there and from time to time they were kept out by the pickets on the outside.

Mr. Leahy: I ask that that answer be stricken out, if the Court please. That is an answer that does not tell the Court anything; it is a conclusion of the witness. Let him tell the facts if he knows them, or what he knows about them.

The Court: Strictly speaking, that is a conclusion, but if there was a conspiracy by which these men were kept out, if that keeping out of those men was an unlawful act, and if its effect was to reduce the plaintiff's labor supply so he couldn't fill the interstate shipments, then, of course, there is a liability of the defendants here.

Mr. Leahy: That is not the theory of the objection.

The Court: I get the objection. I am going to sustain it.

Mr. Holland: I beg your pardon?

The Court: The objection is sustained because it calls for a conclusion.

Mr. Holland: I will tell you my position, although I don't like to interrupt the Court very much. I am putting this man on here to show that he owns that business, and to show the effect. We put on a good many witnesses before

your Honor, both men and women, who had been assaulted and abused, and called vile and indecent names—

239 Mr. Leahy: I object to that statement. The evidence did not show that anybody was assaulted.

Mr. Holland: I have the transcript written up.

That is all I want to get from this man, that arising out of those indecencies, and out of those—

The Court: This is an equity case. I am of the opinion that it is a mere conclusion. He may answer, because I am not found to be in error because of what I do admit, but because of what I do not admit.

To which ruling of the Court, the defendantss, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. By reason of what happened, were you permitted to keep your factories up in the usual and ordinary way?

A. We were allowed to keep them open, but we couldn't get people enough to stay in them and operate them.

Mr. Holland: That is all I want to as the gentleman.

Cross Examination

By Mr. Leahy:

Q. Mr. Meisel, you say you are the president of the Herkert and Meisel Company, which is one of the plaintiffs in this case? A. Yes, sir.

Q. And your factory is located where?

A. Thirteenth and Chestnut and Fifteenth and Pine.

Q. And do you go to that factory every day?

A. Almost every day.

240 Q. And remain there all the day, do you?

A. No, sir.

Q. How much of the day do you usually remain at your factory?

A. Anywhere from two to three hours.

Q. Do you come in the morning?

A. I come in the morning, yes, and sometimes I go there in the afternoon.

Q. So far as you know and you have observed, you never saw anything at your factory, or outside of your factory, on the part of any—any display of violence, or anything of that kind?

A. Nothing only stop the men.

Q. What is that?
A. Stopping the men as they went to work.
Q. You were never stopped yourself, were you?
A. No, sir.
Q. And you didn't see anybody else stopped there?
A. Yes, sir.
Q. Whom did you see?
A. When they started to work, they stopped them and spoke to them.
Q. You didn't hear what was said, did you?
A. No, sir.
Q. You don't know anything about that. You never saw any violence of any kind, did you?
A. No, sir.
Q. All of these men that left your employment belonged to Local Union No. 66 of the United Leather Workers International Union
A. I understand they do. I am not sure.
Q. You know they do? A. What?
241 Q. I say, you know they do?
A. I don't; I am not sure.
Q. Well, they were under no contract whatever to work for your corporation, were they?
A. Oh, not any more than anybody else.
Q. That contract had expired? A. Yes, sir.
Q. And it was because of the failure of the negotiations which you and the other trunk makers associated with you in your combination had with the United Leather Workers, that this strike occurred, was it not?

Mr. Holland: I will object to that. That is not in issue in the case. It does not traverse any allegations in the main bill at all, as to what these people did.

The Court: Yes. I don't care why they quit, gentlemen. All I am interested in is in what they did after they quit.

Mr. Leahy: Then we will arrive at this conclusion, that these men were justified in quitting and going out on strike. I am satisfied with that admission from Mr. Holland and I will not proceed—

Mr. Holland: We are not trying to enjoin them for being on strike. They had that right.

The Court: It is not a question of having a right to quit, or having any good reason to quit, but the question is

whether they [demenned] themselves lawfully and
242 peacefully within the purview of the Clayton Act after they did quit.

Mr. Leahy: Q. Now, to your knowledge, Mr. Meisel, there was no active interference of my kind on the part of any of these strikers with the shipping of your goods in interstate commerce, as far as you know?

A. Only to stop the people as they were trying to enter our factory to go to work.

Q. That is all. Whatever occurred there, occurred at the factory itself and not outside of it?

A. Outside of the building.

Q. Well, outside of the building, say, but there was no interference with the delivery of freight to the depot, or any other place, where freight is usually received for interstate shipment was there?

A. Not that I know of.

Mr. Leahy: That is all, sir.

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243 JAMES A. QUIRK, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. State your name. A. James A. Quirk.

Q. And your business?

A. James A. Quirk Trunk Company, President and Treasurer.

Q. How long has your concern been in business in this City? A. About forty-eight years.

Q. And it is a corporation: A. Corporation.

Q. Now, what is your investment up there, if you know?

A. About fifty thousand dollars.

Q. Has your factory been shut down by reason of a strike?

A. One of our factories, 915 Wash has been completely closed down.

Q. Have you had some trouble at your place since the strike?

A. Well, a good many that remained there were kept away from coming back the next few days after the strike was called.

Mr. Leahy: I ask that that answer be stricken out, because that is a conclusion.

Mr. Holland: He says he knows.

The Court: I will overrule the objection.

To which ruling of the Court, the defendant's by their counsel, then and there, at the time, duly excepted.

244 Mr. Holland: Q. Do you know that they were kept away? A. Yes, sir.

Q. You know that of your own knowledge?
A. Yes, sir.
Q. What do you figure your loss since the inauguration of this strike; your loss to your business in interstate commerce?
A. About twelve or fifteen thousand dollars.
Q. Herman McComis, the boy who testified here Saturday a week ago, was he one of your employes?
A. Yes, sir.
Q. And Zilch, was he an employe of yours?
A. Yes sir.
Q. And there was another young man whose name I don't remember, that testified? A. Potts, Ed Potts, yes.
Q. Do you know any of these strikers that were picketing your place, personally? A. Yes, sir.
Q. Who were they? A. One named was Paul Berry and Charles Morgan.
Q. Those are the men that picketed your place continuously? A. Yes, sir.
Q. Do you know anything about their financial circumstances, whether men of small means or whether—
A. I really don't know.
Q. What?
A. I don't know their financial condition.
Q. They are working men, are they? A. Yes, sir.

Mr. Holland: That is all.

245 Cross-Examination

By M. Leahy:

Q. Mr. Quirk, you say you are President of your Company, the— A. James A. Quirk Company.
Q. And your factory is located where, did you say?
A. 915 Wash and 1228 Olive.
Q. 1228 Olive? A. And 915 Wash, yes.
Q. Now, do you visit both factories every day?
A. I cannot say that I visit them both every day, no, sir.
Q. How frequently are you there?

A. Oh, two or three times a week in the Ninth and Wash Street.

Q. During the strike have you visited these factories more frequently than usually, than you did hitherto?

A. I can't say that I did, no.

Q. Well, at all events, on these occasions that you went to the factories, did you observe any persons on the outside of the factory? A. At 1228 Olive Street, yes.

Q. You did not see any of these people doing anything up there, did you, to interfere with your employes?

A. I did not, no, sir. I did not see them.

Q. Do you know anything of your own personal knowledge about any such interference?

A. I never saw them personally.

Q. What you know is merely hearsay and communi-
246 cated to you by [—]

[—] understand, that you and the rest of the corporations—

A. I haven't the least idea why they left.

Mr. Leahy: That is all.

Redirect Examination

By Mr. Holland:

Q. How many orders did you have on file? I mean what was the amount in money and value, on the tenth of April, to ship in interstate commerce?

A. About fifteen thousand dollars.

Q. About fifteen thousand dollars? A. Yes, sir.

Q. Mr. Leahy asked you if your wagons were interfered with: You say they were not: Was the manufacture of your goods to be shipped in interstate commerce interfered with? A. Yes, sir.

Mr. Leahy: That is a conclusion.

Mr. Holland: I don't think it is a conclusion, sir.

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247 HARRY A. KOLB, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Harry A. Kolb.

Q. What is your business?

A. Manufacturer of trunks and cases.

Q. Where is your place of business? A. 1218 Olive.

Q. What is the name of your firm?
A. H. A. Kolb Trunk & Case Company.
Q Is that a corporation? A. Yes, sir.
Q. Organized under the laws of Missouri? A. Yes, sir.
Q. What position do you hold with that Company?
A. President.
Q. What? A. President.
Q. Where is your place with reference to Mr. Quirk's place? A. About three doors away.
Q. You are on the same street with Mr. Quirk, three doors east? A. Yes, sir.
Q. Has your place been picketed? A. Yes, sir.
Q. What? A. Yes, sir.
Q. Do you know any of those pickets? A. Two.
Q. What are their names?
A. Fred Teuschert and John Peters.
248 Q. What was the result upon your help to have those men picketing your factory, if you know?
A. We could get no help since then. We had no help since then.
Q. You say your place is three doors from Mr. Quirk's, who just preceded you on this stand? A. Yes, sir.
Q. You ship goods in interstate commerce, don't you?
A. Yes, sir.
Q. Can you tell us the money value of the orders that you had for shipment in interstate commerce at the time this strike was inaugurated?
A. We had some between five and six thousand dollars.
Q. How much?
A. About between five and six thousand dollars.
Q. Could you give the Court an estimate of your loss by reason of—

Mr. Leahy: I object to all this testimony for the reason I have made before. I don't care to object to every single question.

The Court: You are familiar, I think, with the rules in equity.

Mr. Leahy: I understand the rules. Then I make my objection and ask that this testimony be stricken out, on the ground that the defendants are not liable for any loss or damage unless caused by illegal conduct on their part, and none has so far been shown.

249 The Court: I overrule the objection and if I should find when I come to examine the case, that it is not competent or admissable, I will take it out of consideration.

To which ruling of the Court, the defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. Now, what was the amount of goods that you had ordered for shipment in interstate commerce at the time this strike was inaugurated?

A. Between four and five thousand dollars.
Q. About between four and five thousand dollars?
A. Yes, sir.
Q. What was the financial loss to you by reason of the fact that you were unable to ship those goods?

Mr. Leahy: I make the same objection.

The Court: Overruled.

To which ruling of the Court defendants, by their counsel, then and there, at the time, duly excepted.

A. All of the four and five thousand dollars.
Q. What is your total investment in that Company there?

Mr. Leahy: I make the same objection.

The Court: Objection overruled.

To which ruling of the Court defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. I mean the Company's investment.

250 A. Ten thousand dollars.

Mr. Holland: That is all.

Cross Examination.

By Mr. Leahy:
Q. Mr. Kolb, you say you are the President of one of these plaintiffs, H. A. Kolb Trunk & Case Company?
A. Yes, sir.
Q. How many trunk makers do you employ?
A. Trunk makers?
Q. Yes. Well, I guess leather workers, you would call them.
A. Twelve, twelve all told.
Q. All of these men left your employment on April 10th were members of Local Union No. 66, were they not?
A. So they said, yes, I understand they were.
Q. And they were under no contract of any kind with you or your corporation at that time?
A. No, sir.

Q. It was because of the failure of negotiations between the manufacturers and the employes that this strike took place and they left?

A. Yes, sir.

Q. You have only one factory?

A. One factory.

Q. Where is that located?

A. 1218 Olive.

Q. Mr. Kolb, do you attend that factory every day?

A. Yes, sir.

Q. How long do you stay there?

A. The greater part of the day.

Q And you have been attending there since the tenth of April up to the present?

A. How is that.

Q. And you have been attending there from the tenth
251 of April up to the present, on the working days?

A. Yes.

Q. Up to the present time the greater part of each day?

A. Yes.

Q. In active charge of your business?

A. Yes, sir.

Q. Have you ever been interfered with in going to or coming from your place, by anybody on the outside?

A. No.

Q. Have you ever seen anybdy interfered with?

A. No, sir.

Q. So that of your knowledge you don't know whether anybody working in your factory has ever been interfered with by anybody?

A. No, sir.

Q. And have you gone out to the street in the front of your building to make personal observations frequently?

A. Yes, sir.

Q. You have? A. Yes, sir.

Q. How frequently have you gone out there each day?

A. Not frequently.

Q. Not each day?

A. Yes, sir.

Q. You have gone frequently each day, you say: Tell us how frequently you have gone there.

A. Once or twice during this strike.

Q. That was all?

A. That was all.

Q. Then the mater was so trivial and unimportant that you never made a personal investigation of the matter: You so considered it, did you not?

A. No, I didn't.

252 Q. But you never made any investigation?

A. The workmen made the investigation.

Q. You never made it yourself as the responsible head of this company?

A. No.

Q. And you don't know that any of your men, or your wagons engaged in conveying freight of your manufactured goods, or output, to the freight depots or trains, were ever interfered with—

A. No, sir.

Q. —since the strike? You don't know of one single instance.

That is all.

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253 H. M. Wilson,. a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. H. M. Wilson.

Q. What is your business?

A. Manufacturing leather goods.

Q. What Company are you connected with?

A. Stability Leather Goods Manufacturing Company.

Q. What is your position with that company?

A. President and Treasurer.

Q. And how long have you been such?

A. About a year.

Q. Where you president on the tenth of April of this year? A. Yes, sir.

Q. Do you remember a strike having been inaugurated against your Company, among others, at that time?

A. Yes, sir.

Q. After those men went out, if they did go out, what happened? A. We couldn't get any more men.

Q. What did the men do that went out?

A. Well, they stood around the street and seemed to be talking matters over.

Q. Where was that?

A. Mostly over on Broadway, about a block from our place.

Q. How many of them stood there?
A. One, two and three, in groups.
Q. Do you know any of those men? A. Yes.
Q. Who were they?
254 A. Well, I remember seeing Mr. Deschant there.
Q. Dechant? A. Yes, sir.
Q. And Mr.—— A. Steve Wilhelm.
Q. Is that how he spells it? A. Yes.
Q. And anybody else?
A. Yes, I have seen Mr. Kuntz there.
Q. Kuntz? A. Yes, sir.
Q. Anybody else? A. Yes, others that I didn't know.
Q. What was the largest crowd of men you have ever seen there adjacent to your factory, or on Broadway?
A. I don't think I have seen over three at a time.
Q. If you know, have they ever interfered with your men going to and from their work, or trying to work?
A. Well, not to my direct personal knowledge, no.
Q. Do you mean by that that you have not seen it?
A. Yes, myself.
Q. Do you know whether they did or not?
A. Yes, I know they have.

Mr. Leahy: I ask that that answer be stricken out, because that answer is a conclusion of the witness. He says of his own personal knowledge he does not know.

The Court: Objection sustained.

Mr. Holland: What is the investment your Company has, the amount of money invested in the Stability Leather Goods Company?

A. Well, it is in excess of $30,000.00.
Q. You ship goods in interstate commerce, do you?
255 A. Yes, sir.
Q. What was the amount of—the money values of the orders that you had on hand on the tenth of April for shipment in interstate commerce?
A. I would say thirty-two or thirty-three thousand dollars.
Q. Are the orders coming in yet?
A. Very few.
Q. Have you been able to fill those orders in interstate commerce?

Mr. Leahy: I object to this testimony, if your Honor please, for the reasons that I have given in my objections to

the previous testimony, that the defendants, unless it be shown that their acts were illegal, and that they actively interfered with interstate commerce, can not be said to be responsible for any damages that this Company has suffered by reason of their quitting.

The Court: I have ruled on this about three times already this morning. To my mind the law on this point is too plain for argument. I repeat, that the employes had the right to strike, either with or without cause, with or without any sufficient cause, but the question here is as to the manner in which these employes behaved themselves, or demeaned themselves after they strike and quit work. If by unpeaceful or unlawful means, that is, if by threats or abuse, or intimidation, or by picketing in such numbers around, at, or near, the places of business of the plaintiffs, they menanced or intimidated by the force of numbers to the extent that
256 people who wanted to work were kept from working, or were driven away and that these things interfered with the interstate commerce of these plaintiffs to such an extent as to cause a loss, and if this loss (other things being equal) is irreparable, then it is a matter for the consideration of the court here. I don't think I can make it any plainer.

There are two ways in which interference can be had—the actual and active interference with the wagons that were engaged in hauling raw material to, or manufactured stuff from, the place of business of the plaintiffs, which material had theretofore been, or was, designed to be carried in interstate commerce, or they could interfere in the manner in which I have stated. There is that way. So, if the proof brings it within either way, I think I ought to consider it.

I will overrule the objection.

To which ruling of the Court, the defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. What do you figure approximately your loss to be by reason of the fact that you have been unable to ship your goods in interstate commerce?

Mr. Leahy: Same objection.

The Court: Same ruling.

To which ruling of the Court the defendants, by their counsel, then and there, at the time, duly excepted.

A. Well, it is over three thousand dollars, possibly
257 four.

Q. Your Company is a corporation? A. Yes, sir.

Q. Under the laws of the state of Missouri? A. Yes sir.

Mr. Holland: That is all. Take the witness.

Cross-Examination

By Mr. Leahy:

Q. Mr. Wilson, you say you have been President of this corporation, The Stability Leather Goods Manufacturing Company, for over a year. You know that the contracts with all of your employees that were members of Local Union No. 66 had expired previous to the strike?

A. No, not with us.

Q. Did they have any contracts with you?

A. Yes sir.

Q. Well, any how, they were all members of the Local Union, all the men that left your employment?

A. Yes, sir.

Q. You know that to be so. Where is your factory located at, where is that factory located?

A. At 918 South Fourth Street.

Q. You have been there every day have you?

A. Yes, sir.

Q. Since the strike? A. Yes, sir.

Q. How long have you spent there each day at your factory? A. Oh, eight or ten hours.

Q. And you have been in active charge of the business up there? A. Yes, sir.

Q. Now, have you ever been interfered with?

A. No, sir.

258 Q. As you went to your factory or came out from it?

A. No, sir.

Q. Or have you observed anybody else—

A. No, sir.

Q. —being interfered with? A. No, sir.

Q. So that of your own knowledge and so far as your own observation goes you don't know of any active interference on the part of any of these defendants with any of your employees, or the employees of your corporation?

A. No, sir.

Q. Have any of your wagons, or drivers, been interfered with by these defendants, in conveying your manufactured articles to the freight depots, or to other places?

A. No.

Q. To your knowledge? A. No.

Q. So, as far as that aspect of the case is concerned, there has been no active interference with the delivery of your goods outside of the fact that these men have quit their work?

A. No.

Q. I mean, the delivery of your goods to freight depots, or for interstate commerce— A. No, sir.

Redirect Examination

By Mr. Holland:

Q. When you say that there was interference with your business you mean there was interference with the manufacture of your goods to be shipped in interstate com-
259 merce, is that it? A. That is it.

Q. I will ask you this question: do you know, or can you tell the Court—are there in Court any of your employes who have been interfered with? A. Yes.

Q. They are here in Court now? A. Yes, sir.

Recross Examination

By Mr. Leahy:

Q. Mr. Wilson, just one question: Did I understand you to say the contracts that you had with your men, your employes, which your corporation had with your employees, members of this Union, had not expired on April tenth, or prior thereto?

A. I am pretty certain that we have a contract that terminates in April. The day I cannot be certain of. It was either the twelfth—

Q. Don't you know these contracts terminated prior to April 10th?

A. I am not aware of that. I am not certain of that.

Q. You are not aware of that?

A. No, sir.

Q. Have you examined these contracts? A. I have the contracts in my safe in the office.

Q. Your signature is on that contract, is it not?

A. Yes, sir.

Q. I will ask you this question: was it not a fact that the employes of your corporation, who were members of
260 this Local Union No. 66, offered to continue work under the same contract which you had signed for the previous year?

Mr. Holland: That is objected to.

The Court: I shall sustain that objection. I will assume that they had the best of reasons for quitting.

Mr. Leahy: Well, that is all, your Honor.

Mr. Holland: That is all, Mr. Wilson.

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261 CLARA GRIMM, a witness of lawful age, being duly sworn and examined, testified in behalf of the plaintiffs, as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Clara Grimm.

Q. Now, Miss Grimm, where do you live?

A. 8575 Moro Lane.

Q. What part of the City is that in? A. Jennings.

Q. Where have you been employed for the last month, or few months?

A. Stability Leather Goods Company.

Q. Is that at 918 South Fourth Street in this City?

A. Yes, sir.

Q. In order to go from your work, what car do you take to go to Jennings? A. Why, Fourth Street.

Q. You take the Fourth Street car and ride how far?

A. To Olive.

Q. Then what car do you take?

A. I take the train then.

Q. You go out to Jennings?

A. Yes, sir.

Q. Have you been working since the tenth of April at the Stability Leather Company's place?

A. Yes, sir.

Q. You worked there steady every day?

A. Yes, sir.

Q. Have you had any experience with anybody around the plant when you were going to work or coming from work at any time since the tenth of April?

262 A. Experience?

Q. I mean, have you met anybody while going into the factory, or had a conversation with anybody, has anybody spoken to you in any way since that time?

A. Yes, sir.

Q. Who did that?

A. Steve Wilhelm and John Bosh.

Q. Talk so I can hear you, and talk to me out loud.

A. Steve Wilhelm and John Bosh.

Q. Steve Wilhelm and John Bosh. A. Yes, sir.

Q. Bosh? A. Bosh.

Q. What was the other man's name?

A. Stephen Wilhelm.
Q. Just two men? A. Just two men.
Q. When did you meet those two men?
A. Well, I was coming from work when I met them.
Q. In the evening? A. Yes, sir.
Q. Where had you taken the car?
A. At Fourth and Chouteau.
Q. What did Wilhelm and Bosh say or do to you at that time?
A. Why, they just asked me where I was coming from and I said, "From work." Then they said that I should think it over, that I left my fellow workers like that, and that my boss would think the same thing of me, that I would leave him the same way some day. They asked me if the strike was over and I says "I didn't know." They said I should go up at the office and find out of the strike was over; I should go up with them they were going to find out whether it was
263 over—Mr. Birkenmeier's office.
Q. Did you know what Mr. Birkenmeier's was?
A. Yes, sir.
Q. Did you know what his business was?
A. No, sir.
Q. What? A. Business agent.
Q. For the Union? A. Yes, sir.
Q. And they wanted you to go up to that office with them?
A. Yes, sir.
Q. Where did this conversation start, did it strat on the street? A. No, in the car.
Q. They got on the car with you? A. Yes, sir.
Q. You were going north, were you? A. Yes, sir.
Q. Do you know where Wilhelm or Bosh live?
A. No, sir, I do not.
Q. You don't know whether they live up north or not, do you?
A. One lives—I think they both live in South St. Louis.
Q. They both live in South St. Louis?
A. Yes, sir.
Q. How far did they ride with you on the car?
A. Up to Broadway and Pine.
A. Did they get off then? A. No, sir.
Q. You got off? A. Yes, sir.

Cross-Examination

By Mr. Leahy:
Q. Miss Grimm, whn did you go to work at the Stability Leather Goods Manufacturing Company?
A. About two weeks ago.

264 Q. You are not a member of the Local Union are you?
A. Yes, sir.
Q. Oh, you are a member? A. Yes. sir.
Q. And you were a member of the Local Union prior to this strike? A. Yes, sir.
Q. That is the Local Union of the United Leather Workers Local No. 66, you were a member of that Local Union?
A. Yes, sir.
Q. Prior to the strike. And was this man that spoke to you, Wilhelm, was he a member of that Local Union, also?
A. Yes, sir.
Q. And was the other man, Bosh?
A. Yes, sir.
Q. And you say both of these men met you as you came out of the factory—
A. No, they got on about two blocks from the factory, They got on the car.
Q. About what time was that A. About 5:15.
Q. You met them where?
A. On the car, Fourth Street car.
Q. Up where, did you say?
A. About two blocks from the factory.
Q. And they told you that the strike was on?
A. Yes, sir.
Q. And that you should see Mr. Birkenmeier, whom was the business agent? A. Yes, sir.
Q. At his office? A. Yes, sir.
Q. And that was all they said to you, was it?
265 A. Why, they said that those scabs were just scabbing so long and no longer; it didn't do me any good to scab. They said I should think it over, that I was doing wrong by scabbing.
Q. Which of them said that?
A. Stephen Wilhelm.
Q. Who? A. Stephen Wilhelm.
Q. When you were asked this question by Mr. Holland, you didn't say anything about scabs, did you?
A. What is that?
Q. I say, you didn't say anything to Mr. Holland when he examined you, any statement about scabs, did you?
A. No, sir.
Q. You didn't think of it at that time, did you?
A. No, sir.
Q. How did you think of it since?
A. Well, you just asked a different question of me.
Q. You didn't go up to the office, did you?

A. No, sir.
Q. And you have been working there since?
A. Yes, sir.
Q. You continued working since? Very well. Now, nobody has ever interfered with you since that time?
A. What is that?
Q. Nobody has ever interfered with since that time?
A. No.
Q. And these men told you the strike was on?
A. Yes, sir.
Q. And that you ought not to continue?
A. Yes, sir.
266 Q. How do you know they lived in South St. Louis?
A. From the factory. I work with them at the factory.
Q. Did you know where they lived in south St. Louis?
A. No, sir, I did not.
Q. You don't know whether they live in north St. Louis or south St. Louis?
A. I think they live in south St. Louis.
Q. You don't know where do you? A. No, sir.

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267 AMANDA BERGER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:
Q. State your name? A. Amanda Berger.
Q. Where do you live? A. 2008a McClaren Avenue.
Q. What part of town is that?
A. Jennings, Missouri.
Q. And you take the same car as this little girl to go home? A. Yes, sir.
Q. How long have you worked for the Stability Leather Goods Company? A. I guess about six months.
Q. You have worked there six months? A. Yes, sir.
Q. Were you working there at the time this strike or walk out, or whatever you want to call it, took place?
A. Yes, sir.
Q. Have you been bothered by any one around there since that time? A. By three men.
Q. Give their names?
A. Ambrose Kuntz, Stephen Wilhelm and John Bosh.
Q. Are those men in Court here today?
A. I believe they are.

Q. What, if anything, did those three men, or any one of them, say to you at any time?

A. They stopped me and asked if I was going to work. I says, "No." At the same time I was back to see if I
268 could get work there. They says they didn't think I would go back there and put a disgrace on my four children like that.

Q. Why did you tell them that you were not going back to work?

A. I was counting on going back. I was afraid maybe they would laugh at me or something.

Q. What did Wilhelm say to you, if anything?

A. Well, they all said the same.

Q. What did he say?

A. Well, he said a bad word, if I was going back to work, he said he didn't think I should go back to work and put a disgrace on my children.

Q. Disgrace your four children? A. Yes, sir.

Q. Have you four children? A. Yes, sir.

Q. Are you a widow lady? A. No, just parted.

Q. Was Kuntz with Wilhelm at the time?

A. Yes, there were three men.

Q. And one was Bosh? A. Yes, sir.

Q. How far away from the factory was that?

A. Just about a block from the factory.

Q. How often have you seen them around that place?

A. That was the only time I seen them, just that one time.

Q. Did you take the car to north then? A. Yes, sir.

Q. Did they follow you any further?

A. They walked up about six blocks with me.

269 Q. What did they say the result would be to you if you continued to work?

Mr. Leahy: That is objected to as leading.

A. Well, they said—

Mr. Holland: Q. What did they say?

A. They said if we went back to work and they came back they would have us kicked out.

Q. Which one of them said that?

A. Well, they all three said it.

Mr. Holland: That is all.

Cross-Examination

By Mr. Leahy:

Q. Were you a member of the Local Union at any time prior to the strike, of No. 66? A. Yes, sir.

Q. Have you ceased to be a member of that organization?

A. All the time.

Q. What? A. Yes.

Q. You were a member at the time the strike was declared and these men that had that conversation with you that you have detailed to the Court, they were also members?

A. Yes, sir.

Q. Were you present at the time, at the meeting that the strike vote was declared? A. Yes, I was there.

Q. What is that? A. Yes, sir, I was there.

Q. And you agreed to go out, did you? A. Yes, I did.

Q. And did you go out? A. Yes, sir.

270 Q. And afterwards went back to work?

A. I went back to work.

Q. Now, when these three men—you say you met them in the vicinity of the factory? A. Yes, sir.

Q. And they told you at that time that you was not to continue to work there at the factory, did they? A. Yes, sir.

Q. They told you that you were violating the laws of the organization to which you both belonged by continuing to work? A. Yes, sir.

Q. That was the sum and substance of the conversation you had with them, and after that you still continued to work, did you? A. Yes, sir.

Q. You were not intimidated in any way?

A. No, I was not.

Q. You have been working there ever since, have you?

A. Well, I was working some other place first, about two weeks.

Q. But you went back to work?

A. I went back to work.

Q. And since you went back to work you have never been interfered with? A. No, sir, never.

Q. When was this conversation you have just detailed to the Court, with these men?

A. Well, that must have been about a week ago.

Q. And when was it you went back to work?

A. I went back on a Wednesday?

Q. What? A. On a Wednesday.

Q. How soon after the strike was on, from the tenth
271 of April? How soon after that did you go back to work?

A. Well, I went back about three weeks after that.

Q. And you have been working there continuously ever since, have you? A. Yes.

Q. And except the one instance you have mentioned, you have never been spoken to by anybody? A. No, sir.

Q. You have gone in and come out from there free from

A. Yes, sir.

Q. Now, which of these men was it that said you would be thrown out of the factory?

A. Well, they all three said it.

Q. Did they all repeat it at the same time?

A. No, that was Steve Wilhelm said that.

Q. Did they all speak with one voice?

A. No, they all said it; when one got through then they all said it.

Q. Did they all say the same thing?

A. Yes, they all said the same thing.

Q. What did they first say?

A. They stopped and asked me if I was going to work and I says, "No." but at the same time I was going to go back and see if I could get work and they said, "Well, they didn't think I would go back because it would disgrace my children.

Q. What did they tell you—did they tell you it would be a violation of the rules of your organization to go back to work? A. Well, I believe they did tell me that.

Q. Was that where the disgrace came in?

A. Yes, sir.

272 Q. Now, all three said that, did they?

A. Yes, sir, all three said that.

Q. Now, then, when they told you that if you went back to work you would be thrown out— A. Yes, sir.

Q. Which one of them was the first to make that statement? A. Ambrose Kuntz.

Q. Which of them made it the first, who made the statement first? A. That was Ambrose Kuntz.

Q. What? A. Ambrose Kuntz said that to me.

Q. Then did the others say anything after that?

A. No, sir, they never said anything.

Q. But he said it and nobody else? A. No, sir.

Q. Then you were wrong when you said to the Court that they said it, were you not, the whole three?

A. No; I said before they all three said it.

Q. Don't you know they never said anything of the kind; don't you know that; don't you know they never said you would be thrown out of the factory?

A. They said that to me.

Q. You think they did? A. They did say it.
Q. You know Mr. Kuntz did say it, but you won't say the two others did?
A. That was the only one that said it.
Q. So when you made the statement that the whole three of them said it, you were in error, were you not; that was wrong, was it not? Answer yes or no.
273 A. (No answer)
Q. Was that right or was that wrong?
A. It was wrong.
Q. Why did you make that false statement?

Mr. Holland: That is objected to. The best she can do is to say that one said it. That is not a false statement.

The Court: The objection is sustained.

Mr. Leahy: Very well, if your Honor please, I will be guided by that.

Q. When did you first, or to whom did you mention the fact that you had a conversation with these men?
A. Well, I stated—you mean, one of the boys?
Q. Yes.
A. I believe I said it to the boss at the time, Pottmeier.
Q. Pottmeier, did you say? A. Yes, sir.
Q. What position did he hold in the factory where you worked at? A. I don't know what you mean.
Q. What?

Mr. Holland: (To the witness) He wants to know what he did there. A. Oh, he was the boss there.

By Mr. Leahy:
Q. When did you tell him that?
A. Well, I told him that the next day I started.
Q. On the next day? A. Yes, sir.
Q. And have you told anybody else about it?
A. No, sir.
274 Q. You have never made any affidavit of any kind, have you? A. No, sir, I never.
Q. You told Mr. Holland, the attorney, about it?
A. I told him this same thing: that was the onliest time.
Q. You never told him before, did you? A. No, sir.

275 JOHN A. MEISEL, Recalled, testified on behalf of plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. I forgot to ask you this: What is the money value of the amount of orders you have for shipment in interstate commerce at the present time?

A. At the time of the strike we had about two hundred thousand dollars.

Q. At the time of the strike you had about two hundred thousand dollars into interstate commerce? A. Yes, sir.

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276 FRANCES HARDY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Frances Hardy.

Q. Where do you live? A. 5630 Pershing.

Q. Where are you employed?

A. Murphy Trunk Company.

Q. Have you been there since this trouble commenced, the strike commenced; since the tenth of April?

A. Yes, sir.

Q. Now, has anybody said anything to you during that time?

A. Yes, on May 17th there was three men stopped me at the corner of Twelfth and Chouteau.

Q. Twelfth and Chouteau? A. Yes, sir.

Mr. Leahy: If the Court please, I object to that. That was after the petition was filed in this case.

Mr. Holland: It is competent if it is up to today, as far as I know.

The Court: I will hear it.

Mr. Holland: Q. How far is that from the factory of the Murphy Company? A. It is just about a block.

Q. Do you know who those three men were?

A. No, sir.

Q. Where were you at the time?

A. Going home after work.

277 Q. Was there anybody with you? A. No, sir.

Q. What did those three men, or any one of them, say to you?

A. They asked me if I was working down there at Murphy's and I told them yes. They said I was scabbing and that they would fix me on Saturday night; they would take my money—

Mr. Leahy: I object to this testimony for the reason that it is now shown that these defendants had anything whatever to do with the stopping of this boy. The names are not given. We don't know whether they belonged to this Local or not. As far as we know now these men were absolute strangers and the defendants should not have to shoulder the responsibility of any statement made by an outsider.

The Court: I will hear it and determine it for you later. This is an equity suit.

To which ruling of the Court the defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. Have you had occasion to notice pickets around the factory at the different corners since you went to work there? A. Yes, sir.

Q. Where did they usually stand?

A. At Twelfth and Chouteau and Thirteenth and Chouteau, right at the corner of Murphy Company.

Q. Twelfth and Chouteau and Thirteenth and Chouteau?

A. Yes, sir.

Q. Right at the corner of Murphy's factory, you say?

278 A. Yes, sir.

Q. On Papin? A. Well, on Papin and Chouteau.

Q. In order to get to Murphy's factory on Thirteenth and Papin you get the Twelfth Streeet car? As I understand, Fourteenth Street is closed and you cannot take that street —Fourteenth Street bridge is not working?

A. Yes, sir.

Q. And in order to go home you have to take the Twelfth Street bridge? A. Yes, sir.

Q. And Murphy's place is on Thirteenth and Papin and the bridge is on Twelfth? A. Yes, sir.

Q. In order to get to the bridge you walk through a vacant lot, do you?

A. Part of the time, and part of the time I go up to Chouteau.

Q. Which way did you go at the time those men told you you were a scab?

A. I went out Chouteau straight south.

Q. On Thirteenth and Chouteau? A. Yes, sir.

Q. How far is Thirteenth and Chouteau from Murphy's place? A. Well, a hundred yards, I guess.

Q. You have to pass that corner to get to the car, do you?

A. Yes, sir.

Q. How many of those men would usually be there as you passed? A. Well, usually from two to five.

Q. Two to five? A. How many were there?

Q. At the time they told you you were scabbing?

A. Three.

279 Q. Had you ever—have you ever seen them since?

A. I didn't pay any attention to them, what they looked like, and I never noticed them since then.

Q. Have you had any experience with those men, or any other men around there, since that time?

A. I went home on May 27th in the afternoon and there was one man out of two came up and stopped me on last Tuesday—Thursday afternoon—last Thursday afternoon.

Q. Last Thursday afternoon? A. Yes, sir.

Q. Where did that happen?

A. Right at Thirteenth and Chouteau.

Q. What did he say to you, if anything?

A. He asked me if I was going down there to get work at Murphy's and I told him that I was looking for work there and was going home because I was sick, and he says that he didn't want to see me around there any longer, that I was scabbing. I asked him what was his object, that that was an open shop and he says—he used vile language and says, "They are the same up there."

Q. When he used vile language, what do you mean by that?

A. He said, "Those so and so up there all think it is an open shop."

Mr. Holland: (To Mr. Leahy) You don't want the language do you? He says it is vile language. I told him not to say it.

Mr. Leahy: We want to know what was said.

280 Mr. Holland: Q. What was the language?

A. He said, "Those sons of bitches up there all think it is an open shop."

Mr. Leahy: Q. They what?

A. "They all think it is an open shop."

Mr. Holland: Q. That was two occasions. Were there any others?

A. No, sir.

Cross-Examination

By Mr. Leahy:

Q. Now, Hardy, were you a member of Local Union No. 66? A. No, sir.

Q. When did you first go to work at that factory?

A. On May 17th.

Q. On May 17th? A. Yes, sir.

Q. And when was it that you met these two men that you said, or three men?

A. The first time on May 17th, Monday evening.

Q. Did you mention having met somebody on April 7th?

A. No, sir.

Q. Now you say it was May 17th you met them. How long had you been working at the factory prior to that time?

A. No, sir.

Q. You had not? A. I had not been working there.

Q. Were you working on the 17th? A. Yes, sir.

281 Q. Was that the day you went to work?

A. Yes, Monday morning.

Q. And where had you worked previously?

A. Well, I had been working down to the Harlan Court Apartments.

Q. What were you doing down there?

A. Running an elevator.

Q. And you didn't know any of these men that spoke to you on this occasion, did you? A. No, sir.

Q. You say you met them a few blocks from the factory, if I understood you correctly?

Mr. Holland: He said he met them a block from the factory.

Mr. Leahy: A block from the factory. You don't see any of them in Court today, do you?

A. I haven't noticed.

Q. What? A. I haven't noticed any of them.

Q. Have you ever seen them since that time?

A. I didn't look at them at the time close enough to recognize them again.

Q. Were you present in the Court a week ago, the first time this case was being tried, or called for trial?

A. I believe so.

Q. Did you notice them around there then? A. No, sir.

Q. You don't know whether these men were members of this Local Lodge or not, do you?

A. Well, they didn't say.

Q. You went to work then, on the 17th of May and
282 have been working ever since then? A. Yes, sir.
Q. And you say you had seen from two to three men around that place? A. Several times.
Q. Several times, but no more?
A. Well, I never counted them or paid any attention to them.
Q. You saw two or three men in front, all around, in the vicinity of that place where you were working?
A. Yes, I have seen them there.
Q. And you have since the 17th of May been going down every day to work in that place, and you have never been interfered with?
A. Yes, I was interfered with on May 27th.
Q. I believe you told us that. Who was it that spoke to you at that time?
A. I don't know the man's name, but I should recognize him if I saw him again.
Q. Do you see him in the Court room? A. No, sir.
Q. You haven't seen him since that time? A. No, sir.
Q. The man was an absolute stranger to you before that, was he? A. Yes, sir.
Q. You didn't see him on the previous occasion when you attended the trial of this case, did you? A. No, sir.
Q. Then you don't know whether he belongs to this Local Union or not, do you? A. No.

Redirect Examination

By Mr. Holland:
Q. Where did you meet that man on the 27th, that bothered you?
283 A. At the corner of Papin and Chouteau.
Q. How far is that from Murphy's factory?
A. About a hundred yards.
Q. Who was with him?
A. There was two other men standing there who had been talking to him before; one of them had been talking to him.
Q. Murphy's factory fronts on Fourteenth and Papin and Thirteenth and Papin?
A. I am not very well acquainted with the streets up there.
Q. But you know the factory extends a whole block there, is that it? A. It faces north, I think.
Q. It faces north, south, east and west; it is an entire block there, is that it? A. I believe so.
Q. And you say this man was standing in front there on Papin Street? A. Yes, sir.

284 FOREST EASLEY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Forest Easley.

Q. Where do you live? A. 3516 Cass Avenue.

Q. You are employed at the Murphy Trunk Company?

A. Yes, sir.

Q. Has anybody bothered you going to and coming from your work?

A. Yes, sir.

Q. At any time while you have been working down there since April 10th? A. Yes, sir.

Q. Who did that, if you know, and when?

A. I don't know his name.

Q. Where did he meet you?

A. Right about the engine room on Papin, between Thirteenth and Fourteenth.

Q. The engine room toward that entrance of Murphy's factory? A. Yes, sir.

Q. Who was with the man?

A. He was alone.

Q. What did he say to you, if anything?

A. He asked me if I was working at Murphy's; I told him yes. He asked me if I knew there was a strike on. I told him, "Sure." He says, "We are going to have a meeting Friday; we are going to knock you guys' roof in Friday."

285 Q. Have you had occasion to notice the pickets, or the men who stand around there?

A. Yes, sir.

Q. Have you noticed them there often? A. Yes, sir.

Q. How often?

A. Every morning and every evening, in going to and from work.

Q. When did you go to work at the Murphy's trunk factory?

A. I don't know exactly the date. It was about the first Tuesday in May, I think it was.

Q. Where had you been working before that?

A. Luecking Drug Store.

Q. And on the 17th of May you said you went to work—

A. No, sir. It was about the first Tuesday in May, I don't know the date.

Q. This man that met you: Did you ever see him before?

A. No, sir.
Q. How close to the factory was he when you met him?
A. He was right on the sidewalk, right by the factory.
Q. Was he close to where you came out?
A. Yes, he was about one hundred and fifty rods from the door where I came out.
Q. One hundred and fifty rods, did you say?
A. Yes, sir.
Q. He was one hundred and fifty rods away from the factory when you met him? A. Yes, sir.
Q. Was he on Chouteau Avenue?
A. No, sir, he was on Papin.
Q. That would be about four hundred and fifty feet
186 away from the factory when you met him. Do you know whether that man belonged to the Local Union or not?
A. I never did see him before.
Q. You didn't belong to it yourself? A. No, sir.
Q. And that was the only time you were interfered with, was it?
A. Well, there were two fellows up on the street car with a couple of us fellows when we were going to work.
Q. What?
A. Well, there were two fellows up on the street car with a couple of us fellows when we were going to work.
Q. What time was that?
A. It was evening when we were going back from work?
Q. That was not interfering with you, was it?
A. They asked us if we knew there was a strike on. They didn't make any threats but—
Q. They simply asked you if you knew there was a strike on: that was all that occurred at that time. Did you see these men outside the engine room?
A. Yes, sir, near the engine room door on the sidewalk by the factory.
Q. Were you present at the time this case was called for trial about a week ago? A. Yes, sir.
Q. Had you been subpoenaed here? A. No, sir.
Q. Did you notice any of these men you state spoke to you, around here?
A. Yes, one of them is in the Court room now.
Q. What is that?
A. One of them is in the Court room now.
Q. And can you identify him? A. Yes, sir.

287 Q. Will you point out to me who that man is?
A. The gentleman on the end seat there, to the right. (Indicating)
Q. The one laughing back there? A. Yes, sir.

Mr. Leahy: Q. You mean this man on the end seat here? (Indicating) A. Yes, sir.

Q. Was that the man that spoke to you? A. Yes, sir.

Mr. Holland: We would like to know that man's name.

Mr. Leahy: His name is Colley.

By Mr. Holland:
Q. What did that man say to you?
A. He is the one that got on the street car with me.
Q. He is the one that got on the street car with you?
A. Yes, sir.
Q. And he is the man that told you that there was a strike on? A. Yes, sir.

Cross-Examination

By Mr. Leahy:
Q. You don't see any of the other three men that talked to you at the factory?
A. No, sir. I seen them standing on the corner of Thirteenth and Chouteau.
Q. But you have never seen any of these three men in this Court Room, have you? A. No, sir.
Q. Have you ever seen any of these three men since?
A. No, sir.
288 Q. Did you see them at any time around the factory since that time?
A. I see them around Thirteenth and Chouteau one time since. That is the only time I seen them.
Q. There never were any more than two or three men at the outside that you observed around that factory while you were working there?
A. That is all that stopped me. Of course, there was a bunch of men standing around.
Q. I have not asked about—

Mr. Holland: (To the witness) Q. You said there was a bunch of men standing around there?

The Court: One at a time.

Mr. Leahy: Q. You have been working at that factory ever since, have you? A. Yes, sir.

Q. And you have not been interfered with in any way?
A. No, sir.

Redirect Examination

By Mr. Holland:

Q. Mr. Leahy asked you how many men you saw around the corner of Thirteenth and Chouteau?

A. Well, a great number. Several of them around on Thirteenth and Chouteau stood there all the time.

Q. That is the next corner from Murphy's factory, is it not? A. Yes, sir.

Q. And when Mr. Leahy asked you if there were only four or three that you ever saw, have you ever seen more than that?

A. One of them stopped me and Thomas. There has
289 not been over three stopped me, though.

Q. How many were in the crowd at Thirteenth and Chouteau? A. A big bunch of them.

Q. How many about, could you estimate?

A. Twenty-five or thirty.

Q. And you say out of that crowd three stopped you and Thomas, or whoever was coming along?

A. Yes. I was not coming along, I was at the engine room door when they stopped me.

Q. About twenty-five or thirty were at Thirteenth and Chouteau? A. Yes, sir.

Recross Examination

By Mr. Leahy:

Q. These twenty-five men you observed were at Thirteenth and Chouteau? A. Yes, sir.

Q. What corner of the street were they on, the south east? A. North-east corner.

Q. There is a hall there, is there not?

Mr. Holland: Pardon me—

Mr. Leahy: Wait a minute.

Mr. Holland: I think he misunderstood the question.

By Mr. Leahy:

Q. This hall is located at Thirteenth and Choueau?

A. Yes, sir.

Q. That is a lodge hall, is it not; kind of a general meeting hall, is not that true?

A. It is the Yardmen's Association.
290 Q. Lots of yardmen assembly around there?
A. Yes, sir.

Q. Lots of people frequent that place, and that is where you saw these men?
A. Yes, that is where they were.
Q. Right in front of the hall?
A. No, sir. They are directly across the street.
Q. In the vicinity of the hall? A. Yes, sir.
Q. They were not down by the factory? A. No, sir.

Redirect Examination

By Mr. Holland:
Q. There is a saloon at Thirteenth and Chouteau?
A. Yes, sir.
Q. And the hall is across the street from the saloon?
A. Yes, sir.
Q. The saloon at Thirteenth and Chouteau is close to Murphy's factory? A. Yes, sir.
Q. You have to pass that saloon to get to Murphy's?
A. Yes, sir.
Q. And there is where the twenty-five men were?
A. Yes, in front of the saloon.
Q. It is a very small block from Chouteau and Papin, about one hundred feet? A. Yes, sir.
Q. And then—

Mr. Leahy: That is objected to as leading.

The Court: That is leading.

Mr. Holland: Q. How far from Thirteenth and
291 Chouteau Avenue were the two men you testified stopped you at the engine room door?

Mr. Leahy: He said one hundred and fifty rods.

The Court: (To Mr. Leahy) Do not interrupt.

The Witness: They were on Papin, about half way between Thirteenth and Fourteenth.

By Mr. Holland:
Q. But the twenty-five men you speak of were on the corner of hirteenth and Chouteau? A. Yes, sir.
Q. In front of the saloon? A. Yes, sir.
Q. Not in front of the hall? A. No, sir.

Recross Examination

By Mr. Leahy:
Q. That hall is directly across from the saloon, isn't it?
A. Yes, sir.

The Court: Q. Were these men who stopped you, one of whom promised to knock your roof in, were they apparently pickets? A. I suppose they were.

Mr. Leahy: Q. Did you know of your own knowledge whether they were or not? A. No, sir.

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292 HENRY KELLY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:

Q. What is your name? A. Henry Kelly.
Q. Where do you live? A. 3969a Easton Avenue.
Q. Have you been employed at Murphy's? A. Yes, sir.
Q. And have you been there since the tenth of April?
A. No, sir.
Q. When did you come to work there? A. May 7th.
Q. On the 7th of May? A. Yes, sir.
Q. Has anything happened to you since you went to work there?
A. Yes, the first day I worked there I was stopped at dinner time at Thirteenth and Chouteau.
Q. How far is that from Murphy's factory?
A. It is about one block, or one hundred and fifty feet.
Q. How many men were there at the time you were stopped?
A. There was one on the corner at that saloon.
Q. That was at noon time? A. Yes, sir.
Q. What did he say to you, if anything?
A. He said, "Are you working at Murphy's?
Q. What did you say? A. I said, "Yes."
Q. What did he say in response to that?

293 Mr. Leahy: I want to make the same objection as I have been making to this testimony previously, if your Honor please, that the defendants in this case are not bound by the statement that anybody makes, except it is shown they are acting in collusion with them, and for the purpose of carrying out a conspiracy.

Mr. Holland: Of course, I will state, your Honor—

The Court: He may answer. I will determine that from the context.

To which ruling of the Court the defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. State to the Court what he said to you.

A. He said, "don't you know that that place is on strike?" I said ,"Yes."

Mr. Leahy: Q. What?

A. He said, "Don't you know that that place is on a strike?" I said, "Yes". He said "Don't you know this gang around here (using a vile name) will beat you up?

Mr. Holland: Q. What do you mean by that?

A. He said "This gang around here is liable to beat hell out of you."

Q. Did he use those vile names, you say?

A. That is the only thing he said to me, and he told me to go on down the street and two other fellows would talk to me.

Q. What happened then?

A. Two more fellows stopped me before I went to the restaurant.

294 Q. What did they say to you, if anything?

A. They stopped me and asked me if I was working at Murphy's and I told them the same thing as the other fellow.

Q. What restaurant—

A. Between Twelfth and Thirteenth and Chouteau.

Q. You had to pass that corner saloon there to get there on Thirteenth and Chouteau? A. Yes, sir.

Q. Have you ever been bothered at any time since?

A. Yes, Saturday after we got away—

Q. Last Saturday? A. No, May the eighth.

Q. What happened to you then?

A. It was about ten after twelve on Fourteenth and Papin and I was stopped by a man standing in the saloon door. He just told me to "beat it." He asked me if I was working at Murphy's. I said, "Yes, sir." He said, "Why don't you give us poor fellows a chance?" I says, "You have a chance, why don't you do it?"

Cross-Examination

By Mr. Leahy:

Q. You were not a member of Local Union No. 66, were you, at any time? A. No, sir.

Q. And you didn't know any of the members of this Union, did you? A. No, sir.

Q. When was it that you went to work for the Murphy Trunk Company? A. May 7th.

Q. Where had you been working prior to that time?
A. I was working at Emerson Electric.
295 Q. Where is that place of business?
A. 21st and Locust.
Q. On May 7th you say you were stopped at Chouteau Avenue and Thirteenth? A. Yes, sir.
Q. Chouteau Avenue is one block south of Papin Street, is it not? A. Yes, sir.
Q. The factory is on Papin Street and Chouteau Avenue in the block south of that? A. Yes, sir.
Q. Were you coming from the factory at that time?
A. Yes, I was coming from the factory.
Q. You were, then, on Chouteau Avenue when you say you met this man? A. Yes, sir.
Q. Had you ever seen him before? A. No, sir.
Q. You had never seen him doing any picketing, any picket duty around that place?
A. I never seen him before.
Q. You have never seen him since that time, have you?
A. No, sir.
Q. You have not seen him in this Court room, have you?
A. No, sir.
Q. And you don't know whether he belonged to the Local Union or not, to this Local Lodge? A. No, sir.
Q. Was this man alone at the time he met you?
A. Yes, sir.
Q. Repeat now what he said to you. What did he say to you?
A. He said, "Don't you know this gang will beat hell
296 out of you for doing that?" He said, "If you hang around there, they are liable to beat hell out of you."
Q. What did you say to that?
A. I said, "Two can play that game."
Q. You said what? A. "Two can play that game."
Q. What gang was he referring to at that time?
A. I don't know, sir.
Q. What sort of a man was this, was he tall or short?
A. He was a tall man.
Q. Young or old?
A. About medium; a little light.
Q. When did you first tell what this man said to you to anybody?
A. I told it over in Mr. Murphy's office.
Q. Whom did you tell it to? Was that on your return?
A. That was the next day.
Q. You didn't tell it that day, did you?
A. No, sir.

Q. And you made that statement, you say, to somebody in Mr. Murphy's office? A. Yes, sir.
Q. Was it Mr. Murphy, himself? A. No, sir.
Q. And you have been working in that place ever since, have you not? A. Yes, sir.
Q. You have never been interfered with?
A. I didn't hear you.
Q. Since that time? A. No, sir.
Q. After you had this conversation with this man, which occurred at Thirteenth and Chouteau, you went down
297 to get your lunch and returned to the factory, and you have been working there ever since free from any kind of interference. When was it that the second occurrence took place?
A. On May 8th about ten after twelve.
Q. Was that the day after? A. Yes, sir.
Q. How many people did you say spoke to you at that time? A. Only one.
Q. Was that at the same place?
A. No, sir, that was on Fourteenth and Papin.
Q. And at that time this man said to you, or asked you, if you didn't know there was a strike on in the place?
A. Yes, sir.
Q. That is all he said?
A. He said, "Why don't you give us poor fellows a chance?"
Q. Give us what?
A. "Give us fellows a chance."
Q. That is what he said to you at that time?
A. Yes, sir.
Q. And that is all that was said? A. Yes, sir.

Mr. Leahy: That is all.

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298 ALEXANDER DODD, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:
Q. What is our name? A. Alexander Dodd.
Q. What is your business? A. Salesman.
Q. What firm are you connected with?
A. Herkert & Meisel.
Q. Herkert & Meisel? A. Yes, sir.
Q. Have you been working there since the tenth day of April?

A. Between twelve and thirteen years.

Q. Do you remember the inauguration of this strike, or walkout on the tenth of April? A. Yes, sir.

Q. Had you had occasion to notice the conduct of the pickets around the facory?

A. Well, I went up there to help out and I had quite a chance to see.

Q. What factory was that?

A. Thirteenth and Chestnut.

Q. Is that the main factory of the Company?

A. Yes, sir.

Q. Well, what did you see around there while you were at the factory?

A. I see a great many strikers standing around there.

Q. How many?

A. Well, I have seen as high as twenty-three at one time.

Q. Were they standing—where were they standing
299 with reference to the factory?

A. Thirteenth and Chestnut; some—

Q. Have you seen any women doing picket duty?

A. One.

Q. Where did she stand with reference to the factory?

A. She was promenading with two other men.

Q. The woman and two men were walking up and down?

A. Yes, sir.

Q. Did you hear those people say anything, or see them do anything?

A. Yes, I have heard some very vile language.

Q. Detail the language, if you know it, and if it is not too vile.

Mr. Leahy: State what occurred.

Mr. Holland: Q. What did they say?

A. They were coming out of the door—in fact, it was the party that had the two men and the lady. The lady saw another man and myself come out—the man did not see us and she touched me on the arm and said, "Those two fellows came out of there," and he turned around and says, "You bastard, come out of there."

Q. Whom did he refer to, to you and the man that was with you?

A. He turned around and looked at us; I suppose so.

Q. How many pickets were around at that particular time?

A. I counted them specially that day. It was twenty-three.

Q. What do you do at Herkert & Meisel's?

A. I am a salesman in the store.

Mr. Holland: That is all.

300 Cross-Examination

By Mr. Leahy:

Q. Mr. Dodd, you have been working at Herkert & Meisel's you say for about thirteen years?

A. Yes, going on thirteen years.

Q. Did you go there every day since the strike was declared?

A. I have been there every day.

Q. You worked at the factory? A. Yes, sir.

Q. You went in and you came out after the tenth of April continuously since that time? A. Yes, sir.

Q. And you are giving us now these two occasions on which you—these are the only occasions on which there was anything said with reference to you, besides the two occasions in which you think you were referred to?

A. I have heard language in going and coming—I couldn't say it was remarked to me, but it was said when I went by, and I didn't say anything about it.

Q. You say there were twenty-three men at one time: What was that date?

A. Well, that I couldn't tell you just exactly. It was about a week after the strike.

Q. About how long after the strike?

A. I would say about a week.

Q. And these men were standing at Thirteenth and Chestnut Streets? A. Some of them.

Q. Where is the factory located?

A. On Thirteenth Street up to an alley almost to Twelfth Street.

Q. Were they standing up on Thirteenth Street?

301 There was three of them standing there.

Q. How many of them were standing close to the factory?

A. Well, there were three standing on the corner of Thirteenth and Chestnut; there was nine promenading, four groups of two each and one group of three—these two men and a woman. At Twelfth and Chestnut there was seven, and over on the other corner, the north-west corner, there would be four.

Q. You did not stop to take any observation coming out of that factory, but went about your business?

A. I did stop at that time, I say, after the argument was made. I turned around to look, as I say, to the next corner. I thought I would count them and I did.

Q. You don't know the man that made that remark to you?
A. I don't know his name.
Q. You have not recognized him?
A. I think I know him, but I don't know his name.
Q. You have not seen him around the Court room?
A. No.
Q. Did you then after you came out of the factory go about your business?
A. I went on to lunch.
Q. And you saw the men around there?
A. Yes, sir.
Q. Do you know where the meeting room down town is of the members of the Leather Workers?
A. No, sir, I do not.
Q. Don't you know it is at Twelfth and Olive, or close to it?
302 A. No, I never heard where it was.
Q. 11th & Chestnut, I think it is. Did you see these men walking about the factory and going up Thirteenth Street?
A. No, sir, they went to the corner and turned around and went back and forward.
Q. What is that?
A. They went to the corner, turned around, and went back and forward. Sometimes they didn't get entirely to the corner, and came back promenading up and down.
Q. How many men did it?
A. I say there were four groups of them.
Q. On the south side of the street?
A. South side of the street.
Q. Was that the only occasion that you observed these men there?
A. Oh, no, but that was the occasion I made an effort to count them.
Q. You made a special point to count them?
A. Yes, sir.
Q. Did you stand in front of the door while you were counting them?
A. No, sir, not right in front of the door. I started toward Twelfth Street and probably got ten or fifteen feet and stopped.
Q. Did you count the number at the corner of Thirteenth and Chestnut?
A. Yes, sir. There was a group of three standing right at the corner.
Q. And counted the men at the other corner?
A. When I went by.

Q. And the men that were walking to and fro?
303 A. I counted them, yes, sir.
Q. What did you do that for, Mr. Dodd?
A. As a matter of curiosity to see how many were there.
Q. Were you instructed to do that?
A. No, sir; I received no instructions.
Q. You never saw anybody interfered with yourself, did you? A. No, sir.
Q. You came in and went out of that factory, and have been coming in and going out of there since that strike, and you have never seen anybody interfered with?
A. No, sir.

Redirect Examination

By Mr. Holland:
Q. I didn't understand your last answer to Mr. Leahy. He asked you—

Mr. Leahy: I asked if he ever saw any one interfered with.

A. I never seen any one interfered with outside of that.

Mr. Holland: Q. You were there when they used those vile names? A. Oh, yes.

Q. You didn't mean to answer Mr. Leahy by stating you haven't seen anything—
A. Anybody interfered with, going in or out; I didn't see any one else molested.
Q. But when they called vile names, did you consider that interference?

Mr. Leahy: That is for the Court.

304 The Court: Objection sustained.

Martin Nolan, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the plaintiffs as follows:

Direct Examination

By Mr. Holland:
Q. What is your name? A. Martin Nolan.
Q. Where do you live? A. 1106 South Kingshighway.
Q. Have you been employed at the Murphy Trunk Company? A. Yes, sir.
Q. And have been working there since the strike?
A. Yes, sir.
Q. Have you had trouble with any of the pickets around there? A. Yes, several times.
Q. What? A. Sevaral times.

Q. Will you state to the Court what that trouble was at any one particular time since the tenth of April?

A. Well, on Friday, May 7th, when I was going at noon time—

Q. Speak loud.

A. I was stopped at the north-east corner of Thirteenth and Chouteau, and a man asked me if I knew a strike was on. I told him, "Yes." And he told me it was kind of bad to work there and I might get hurt. I went on and was
305 stopped about the middle of the block by two men who told me the same thing.

Q. How often did that occur?

A. This happened on one Friday.

Q. Did you notice how many men were coming to work or were going home from work in the evening?

A. I didn't notice any amount.

Q. What car did you take?

A. I take the Tower Grove and go on—

Q. You go back from the factory to Twelfth Street Bridge? A. Yes, sir.

Q. How many of those men told you, you would get hurt?

A. Two.

Q. That place where you met them was in front of the saloon near the factory? A. Yes, sir.

Cross Examination

By Mr. Leahy:

Q. When did you go to work in the factory?

A. Friday, May 7th.

Q. What were you doing prior to that time?

A. I was not doing anything since April 15th.

Q. You say you were not doing anything before that time?

A. No, sir.

Q. Where were you going when you met this man, or these two men? A. Going to lunch.

Q. And they were standing, you said, at Thirteenth and Chouteau? A. Yes, on the north-east corner.

Q. That is about a block from the factory? A. Yes, sir.

Q. Did you ever meet these men before?

A. No, sir.

Q. You haven't seen them in the Court room?

A. No, sir.

306 Q. You haven't seen them since the time that you were stopped? A. No, sir.

Q. You have never seen them doing picket duty?

A. No, sir.

Q. And you have never been interfered with going back and from the factory except on this one occasion you mentioned? A. No, sir.

Q. One of these men—was it one or two that spoke to you?

A. There was one at the corner and two in the middle of the block.

Q. Two in the middle of the block? A. Yes, sir.

Q. One spoke to you at the corner of Thirteenth and Chouteau and he told you that there was a strike on, did he?

A. Yes, sir.

Q. And that you should not work. A. Yes, sir,

Q. Now, did he ask you to leave? A. No, sir.

Q. That was all that occurred, was it?

A. Yes, and I went on.

Q. He told you that you should not work there, and he asked you that you should not work, that there was a strike on?

A. Yes, he told me that I was liable to get hurt.

Q. He told you what? A. That I was liable to get hurt.

Q. That you were liable to get hurt? A. Yes, sir.

Q. And there was not anything else occurred there at that time? A. No, sir.

Q. Now, you met these other two men: Where was that?

A. That was in front of the saloon in the middle of
307 the block.

Q. That was in the next block?

A. No; between Twelfth and Thirteenth, on the north side.

Q. What did these men tell you?

A. They told me just about the same thing.

Q. Well, what was that?

A. They asked me if the strike was on, and I told them "yes," and they said I was liable to get hurt if I worked there.

Q. They told you just the very thing the other men told you that you met up there? A. Yes, sir.

Q. When did you first tell this story to anybody?

A. I believe it was on Monday, they came around and asked if anything had happened.

Q. What is that?

A. I believe it was either Monday or a Saturday following.

Q. What was the date that you were stopped?

A. It was on May 7th.

Q. What day of the week was that?

A. It was on Friday.

Q. When did you tell that with reference to that date; when did you tell that to anybody, what occurred?

A. It was in the afternoon, and I told it on Saturday morning.

Q. Whom did you tell?

A. One of the men at the factory.

Q. And you have been working there every since, have you? A. No, sir.

Q. And you have never been stopped there?

A. No, I was, on Monday, Monday evening, May 10th.

308 Q. Where was that?

A. That was on Kingshighway between Chouteau—

Q. That was not in the vicinity of the factory?

A. No, sir.

Q. You have been working there continuously ever since?

A. Yes, sir.

Mr. Holland: Your Honor, I have a lot of other testimony, but it is largely cumulative; about along the same line. Does your Honor care to hear any more testimony?

The Court: That is for counsel to decide. I want to expedite the trial of the case all that I can, of course, for I am very busy.

Mr. Holland: I have introduced testimony from each factory and I think I will rest now, and if I need anything in rebuttal, I will put it in, I will offer the affidavits—

The Court: If anything should be called for in rebuttal I shall permit you to offer it.

And thereupon the defendants, by their counsel, filed the following motion to dismiss plaintiffs' bill:

Come now the above named defendants, save and except Edward Schilling, Walter Dechant, Robert Worsing, and Henry Schnitz, and move the Court to dismiss the plaintiffs' bill, for the reason that under the pleading and the proof, the plaintiffs are not entitled to any equitable relief as against said defendants.

309 Which motion to dismiss was by the Court overruled, and to the action of the Court in overruling said motion, the defendants, by their counsel, then and there, at the time, duly excepted.

310 And thereupon the defendants, to sustain the issues on their part, introduced and offered the following testimony:

HERMAN EHLENBECK, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. State your name? A. Herman Ehlenbeck.

Q. Mr. Ehlenbeck, what is your business?

A. What is my business?

Q. Yes. A. What I have been following?

Q. Yes, what you have been following?

A. Trunk maker.

Q. Prior to this strike where had you been working?

A. P. C. Murphy & Company.

Q. How long had you been working there?

A. Probably two and a half or three years.

Q. I believe you are one of the men that was under contract working in the P. C. Murphy Trunk Company prior to April 10th? A. Yes, sir.

Q. And your contract had expired? A. Yes, sir.

Q. Now, then, as a result of the failure to arrive at an agreement between you and your fellow employes, what did you do with refertnce to leaving the employment of the P. C. Murphy Trunk Company?

311 Mr. Holland: That is objected to. The pleadings are not broad enough to allow any such question.

The Court: I think this is merely preliminary. If it is not I will state that there is not very much use in taking up the time of the Court.

Mr. Leahy: It is a preliminary question.

The Court: I have reiterated until I am almost hoarse. that I don't care why these men quit.

The Witness: The question was what, Mr. Leahy?

(Previous question read.)

A. A Strike vote was taken and we went on a strike the tenth of April.

Mr. Leahy: Q. Were all the members of Local Union, or all the men rather, who left with you on the tenth of April,

members of Local Union or Lodge No. 66, of the United Leather Workers International Union?

A. Yes, sir.

Q. They were all present at the time this strike vote was taken, were they?

A. No, they were not all present at that meeting, but there was about six hundred and fifty at that meeting.

Q. Were they all notified to be there? A. Yes, sir.

Q. What official position did you hold in the Local Lodge No. 66 at and prior to the time this strike was declared?

A. Chairman of the executive board.

312 Q. And what were your duties in connection with that office? A. Sir?

Q. What were your duties in connection with that position, and the duties of your committee?

A. My duties were to examine the accounts of the organization and to act as advisor to the organization.

Q. Did you have charge of the strike with the Committee?

A. We were voted to act in conjunction with the executive Committee afterwards for the organization.

Q. Now, will you tell us what, if any, arrangement was made with reference to having any of your members at or around any of these factories of the plaintiffs in this case?

A. There was no arrangements made whatsoever, to my knowledge.

Q. Was there anything said by you, or by any of the members, or officers, of your organization to any of the men that did picket duty, was anything said to them about threatening anybody? A. No, sir.

Q. What has been the custom of the Lodge and the members of the Union with reference to conducting strikes?

Mr. Holland: That is objected to. That is a matter of public knowledge, what their method is.

The Court: Yes. Objection sustained.

By Mr. Leahy:

Q. Did you know, or did any members of your Committee, to your knowledge, know of any act of physical

313 violence of any threats made by any one of your Local organizations?

A. No, sir. We have always opposed it in open meetings.

Q. What were the nature of your instructions in cases of that kind?

A. The nature of our instructions was at all times to stay away from violence, but if they thought they could use peaceful persuasion, why, they were at liberty to do so.

Q. Was there any violence of any kind used in this strike that you ever heard of, while the strike was going on?

A. Not to my knowledge.

Mr. Leahy: That is all.

Cross Examination

By Mr. Holland:

Q. The Executive Committee was composed of you and who else?

A. The Executive Board is composed of three members. The other part holding officers is three other officials—myself and Mr. Kaysing and Mr. John Smith who has just recently died—

Q. You gentlemen were running the local strike here, were you not? A. Sir?

Q. You have inaugurated and you were running the local strike? A. I have charge of it?

Q. You have charge of it? A. Yes, sir.

Q. And you also vote on the strike benefits that are to be paid members who go out, do you?

A. We verify them.

Q. You verify them? A. Yes, sir.

314 Q. Who passes upon them.

A. The business agent; he sends his report in to our headquarters, our International Union.

Q. I understand you to say you had no pickets there during this strike?

A. There was none appointed through our organization at no time.

Q. Do you know whether there were any pickets there any place representing you?

A. I can't positively say. There was no order anyhow.

Q. You don't know if any factory in St. Louis in your line of business in which you are interested was ever picketed?

A. No. sir, because I have never visited any of these factories during the time, only to be as near the Murphy factory on account of our headquarters being at Thirteenth and Chouteau avenue.

Q. But you don't know of your own knowledge that any pickets were ever appointed? A. No, sir.

Q. And it is a surprise to you to know that they were?

A. Yes, sir.

Q. Don't you know that if pickets were appointed you would know it, would you not?

A. Absolutely, yes, sir.

Q. Do you know how pickets are paid? A. Yes.

Q. How? A. There is no pickets paid in our force.

Q. Do you pay any of the men that are out?

A. We pay a strike benefit, yes, sir.

Q. Have you ever seen any men standing on the corner if Thirteenth and Chouteau Avenues?

A. Numerous times.

315 Q. How many of your men?

A. Oh, I would say from time to time, after our meetings disband, and so forth, probably there would be twenty or twenty-five: I couldn't say positively.

Q. I am speaking of the northeast corner of Thirteenh and Chouteau.

A. That is a saloon.

Q. Yes. You have a lot of them, have you not?

A. Yes, sir.

Q. How far is that from Murphy's?

A. That is one block.

Q. That is one block from Murphy's factory. In other words, a man coming from Chouteau Avenue to Murphy's factory had to pass that crowd? A. Not necessarily.

Q. Unless he got off the car at Thirteenth and Chouteau, to come to Murphy's, which is the shortest way, would he not have to pass that crowd?

A. He didn't have to take that side of the street.

Q. Oh, he could take the other side and they wouldn't bother him, is that it? A. Yes, sir.

Q. Now, Mr. Ehlenbeck, Mr. Leahy asked you about the meeting place there: How many meeting places have you in the City of St. Louis? A. Just one.

Q. Mr. Leahy undertook to say sometime ago that you have a meeting place near Herkert & Meisel's on Chestnut Street?

A. That is our business headquarters.

Q. So there is no reason for your being around Herkert & Meisel by reason of having a meeting place there?

316 A. Possibly. That is at 1007 Chestnut Street; many of our boys are—

Q. Fourteenth and Chouteau is also a convenient place for you to meet. A. That is our regular meeting place.

Q. That is near Murphy's? A. Yes, sir.

Q. It is not near Herkert & Meisel? A. Yes, sir.

Q. Do you know any of those men? You have been sitting here all the time: Do you know any of those men whose names have been mentioned in the affidavits as picketing those places?

A. Not at no time have any one of these men ever assumed the duty of a picket.

Q. Do you know what a picket is? A. Yes, sir.

Q. What is it?

A. A picket is a man appointed on a strike to bring back information he can relative to the operation of that plant, and how many men are being operated, to his office.

Q. How long has this strike been going on, to your knowledge? A. Since the tenth day of April.

Q. Did you have men out getting information for you?

A. I at no time appointed anybody to bring me information.

Q. Did anybody appoint anyone to your knowledge? You were on the Executive Committee, were you not?

A. No, sir; nobody did.

Q. In other words, you had no information at all as to what was going on anywhere around the factories?

A. No, sir.

317 Q. Nobody made any report to you?

A. No, sir. I have had reports made to me, yes.

Q. By whom?

A. By men coming in. I couldn't mention their names. They just said they saw a certain party go to work at a certain place, but I couldn't tell the name; I couldn't tell the conversation.

Q. Were those men who told you that members of your Union? A. Yes, sir.

Q. How do you know that? A. I knew that from—

Q. You don't even know their names, do you?

A. I couldn't tell their names.

Q. Are they in Court now? A. I couldn't say.

Q. Don't you know that there is not a single picket in this Court room, only one man?

A. I don't understand your question.

(Previous question read)

A. I don't understand the question yet.

Q. I say, don't you know that there is not a single picket that you had out bringing you information, that is in this Court room now? A. Appointed through me?

Q. No, sir. I say appointed by your organization to bring back news.

A. I told you in a previous statement I knew of no pickets appointed by this organization.

Q. But you told me, too, sir, that you had men out
318 getting information.

A. I did not tell you anything of the kind.

Q. Did you not say men called at your place and gave you information?

A. I told you I met men at our place who had made statements to me, but I was unable to identify them.

Q. Do you know they were members of your Union?

A. I was positive that they were members of our Union.

Q. Are they in Court today?

A. I couldn't identify them.

Q. Have you ever gone around as Chairman of the Executive Committee in charge of this strike, have you ever been around to the factory of Herkert & Meisel?

A. Not with any intention of passing there. I have passed there yesterday afternoon.

Q. Have you ever seen any of your members around there, any time you ever passed?

A. No, sir. I cannot say that I have.

Q. To your knowledge Herkert & Meisel's factory was never picketed?

A. To my knowledge, if I was to say what I know, I could say I don't know.

Q. You don't know? A. I don't know.

Q. You don't know whether it was or not?

A. I couldn't say if it was.

Q. You don't know anything at all about what the pickets did, do you? A. I had nothing to do with the pickets.

Q. Who has? A. No one has.

Mr. Holland: That is all.

319 **Redirect Examination**

By Mr. Leahy:

Q. You have business headquarters at Tenth and Chestnut? A. 1007 Chestnut Strrret.

Q. And do numbers of the members of your organization congregate there? A. Yes, sir.

Q. And your regular meeting place, is that Thirteenth and Chouteau Avenue? A. Yes, sir.

Q. Now, in going from Tenth and Chestnut Streets, would you have to pass by the factory of the Murphy Company, or any one of these factories, or will any of the members going from Chestnut—

A. In going from the hall to the Chestnut Street headquarters we have to pass?

Q. Yes? A. No, sir, they wouldn't have to pass.

Q. But they would go down on Twelfth Street?

A. Usually go east on Chouteau Avenue to Twelfth Street viaduct and then across the viaduct.

Q. You have been holding meetings, have you not, down at Thirteenth and Chouteau? A. Yes, sir.

Q. And after the meetings are over, do the men congregate on the outside of the hall? A. Yes, sir.

Q. I believe there is a saloon across the way that is kind of a headquarters for the members of the organization?

A. Yes, sir.

Mr. Holland: I beg your pardon. That is certainly leading.

Mr. Leahy: I presume it is a little leading. I will ask him the question directly. I didn't understand there was any controversy about it.

320 Q. There is a saloon at Thirteenth and Chouteau?

A. Yes, sir.

Q. And after the meeting is over, do numbers of the men that attend the meetings go over there? A. Yes, sir.

Q. And congregate right around there, do they?

A. Yes, sir.

Q. That is directly across the street from this hall?

A. Yes, sir.

Q. Now, how far from that is the factory of the P. C. Murphy Trunk Company? A. One square, one block.

Q. Is that a long block? A. No, it is not a very long block.

Q. That is on the next street, on Papin Street?

A. It is Papin Street, the next block.

Q. You have never observed any of your men congregating on Papin Street at all, any members of your organization?

A. No, sir; due to the fact that the Company had employees there to keep men away from there, and our men never want to get in trouble, so they never went down there.

Mr. Leahy: That is all.

At this point, a recess was had until two o'clock P. M.

Met after recess on June 1, 1920 at two o'clock:

The following proceedings were had:

321 CHARLES KAYSING, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants, as follows:

Direct Examination.

By Mr. Leahy:

Q. You may state your name, please?

A. Charles Kaysing.

Q. Mr. Kaysing, what is your business?

A. Trunk maker.

Q. Where were you employed at and prior to the tenth of April, of the present year?

A. P. C. Murphy Trunk Company.

Q. That is one of the plaintiffs in this case. And how long had you worked there?

A. Off and on twenty-one years, four years on the last stretch.

Q. Were you at that time and are you now a member of the United Leather Workers International Union and of Local Union No. 66 of that body? A. Yes, sir.

Q. What official position did you hold on and prior to the tenth of April, and do you hold now in that body?

A. A member of the Executive Board.

Q. A member of the Executive Board? A. Yes, sir.

Q. What was the nature of the duties of the Executive Board, particularly in connection with strikes?

A. Well, the Executive Board had charge of the general —had general charge of the strike situation.

Q. I believe you were present, Mr. Kaysing, at the meeting at which the strike vote was taken? A. Yes, sir.

322 Q. And do you recollect amongst the proceedings of that meeting, and after that vote was taken, any action being taken by the meeting with reference to the picketing of any of the plaintiffs' establishments?

A. There was never no action taken in regard to picketing. It was purely a volunteer proposition.

Q. I believe there were some volunteers elected to serve as pickets? A. They volunteered their service.

Q. Now, during your connection with this organization, and in the official position you hold, have you given any instruction to any members of your Lodge, for any picketing or otherwise, to make threat against anybody.

A. Absolutely, no.

Q. Do you know what, if anything, was said at the meeting that you have referred to with reference to the general conduct of the strike by your Local, in particular, with reference to any persons who did picket duty, or were to do picket duty, at these establishments of the plaintiffs?

A. If you will allow me a few words, I can explain.

Q. Yes, I would rather you would.

A. During the interval of this strike, I was acting Chairman and at each and every meeting we held those that volunteered for picket duty was instructed specially to stay away from violence or intimidation or abuse of any kind. They were instructed at every meeting.

Q. Did you ever do any picket duly yourself, Mr. Kaysing? A. Not exactly.

323 Q. On this particular strike?

A. Not exactly picketing. I was there around the factory.

Q. Did you ever talk to anybody around the factory?

A. No, sir.

Q. Did you ever, or were you ever guilty of making any threats to any man in the employment of any of these plaintiffs? A. No, sir.

Q. Or do you know of any threats or assaults made upon anybody, or any violence being used?

A. I know of some violence connected with this strike.

Q. What was that?

A. Well, the violence I referred to, our office was entered and our desk broken open and searched.

Q. What office was that? A. 1007 Chestnut Street.

Q. That was your business office?

A. That was our business office.

Q. Did you keep your books there?

A. We did, but on this special occasion they didn't happen to be there.

Q. Was there any money taken at that time?

A. No, no money.

Q. Was there any money in the desk?

A. There was $125.00 in the desk.

Q. Was that in plain view of the person who opened the desk? A. In plain view.

Q. That was the only—

A. That was the only violence I ever heard of.

324 Q. Were all of the men that were engaged in the leather work, working in the same employment as you were, were they members of the Local Union? A. Yes, sir.

Q. And did they all quit at the same time? A. Yes, sir.
Q. As you did, Mr. Kaysing? A. Yes, sir.

Cross-Examination

By Mr. Holland:
Q. You say you didn't have any regular pickets at all?
A. No, we never arranged any regular pickets.
Q. But at the first meeting you held some pickets volunteered, didn't they? A. They volunteered.
Q. You were at that meeting? A. I was.
Q. And you know everything that went on at that meeting? A. Yes, sir.
Q. And you knew there were instructions given to carry on no violence? A. Yes, sir.
Q. Could you give the names of those men that volunteered for picket duty at that time?
A. I believe I can mention these at Herkert & Meisel. There was Malley Colley; a man that is now working who was replaced by Thomas Halliburton. At P. C. Murphy's there was L. Burg, Nic Paul, and later on Harry Laskowitz. At the Stability Company, Ambrose Kuntz.
Q. Was there anybody else volunteered at the Stability Company? A. Not at that time.
Q. At any other time? A. Not that I remember.
325 Q. You were at every meeting, were you not, Mr. Kaysing? A. I was.
Q. Did you have any woman who volunteered?
A. Women?
Q. Yes.
A. There is one particular instance where a woman volunteered for picket duty.
Q. What meeting was that, was that the first meeting?
A. No, that was about three weeks after the strike took place.
Q. Where was she picketing? A. At Herkert & Meisel.
Q. What was her name?
A. I don't remember; I don't even know her name now.
Q. Is she in Court? A. I think she is.

Mr. Holland: (To Mr. Leahy) Will you tell her to stand up?

A. The young lady in the aisle; right down, straight down on this end, in back of the gentlemen that stood up.

Mr. Holland: Is that the lady that volunteered to picket?

A. I am pretty sure.

Q. And she picketed at Herkert & Meisel?

A. I don't know whether she picketed or not, but she volunteered.

Q. Do you know what her name is? A. I don't know it.

Mr. Holland: I would like to ask her name.

The Court: You may inquire.

Mr. Holland: What is your name? (To woman standing)

A. Esther Bradley.

Q. Do you know a woman named Nora Wielendy?

A. I do now, yes.

Q. Is he in Court? A. Yes, she is in Court.

326 Q. Is Miss Nora Wielandy in Court? A. Yes, sir.

Q. Did Miss Wielandy [very] volunteer to help you out? A. I don't remember of any time.

Q. Have you seen her in the meeting? A. Yes.

Q. She did not volunteer at any time?

A. Not at this particular time.

Q. Do you know as to whether she ever volunteered at any time?

A. I can't say. She may have volunteered to help out Esther Bradley.

Q. So if she picketed at all, she picketed around Herkert & Meisel, is that it? A. Yes, sir.

Q. She is a member of your Union, is she not, Mr. Kaysing? A. Yes, sir.

Q. Now, in operating these strikes you were assisted by Mr. Schilling? A. No, sir.

Q. He came here to give you some assistance, didn't he?

A. He was here just as an onlooker.

Q. He was at that meeting when those men and women volunteered to be pickets? A. No, sir.

Q. He was not? A. No.

Q. He has nothing at all to do with the conduct of your strike? A. No, sir, not a thing.

Q. The Executive Committee is composed of you and Mr. Birkenmeier, and who else?

A. John Smith, now dead.

327 Q. And who else? A. And our general officers.

Q. And your general officers, the Executive officers of your order? A. Yes, sir.

Q. And when the strike is called, it is called by the Executive Committe, composed that way?

A. The strike was not called by the Executive Committee.

Q. It was taken by vote? A. It was taken by vote.

Q. Yes, but he brought it to the attention of the members so that they could vote on it?

Mr. Leahy: I take it, if your Honor please, that that does not make any difference, if I understood your Honor's previous ruling.

The Court: Not unless it leads to something else; if it is merely preliminary—

Mr. Holland: I want to find out who is in charge.

Q. The Executive Committee is composed of the executive officers and you gentlemen, Mr. Birkenmier and yourself? A. Mr. Birkenmier is not a member.

Q. Is he not a member of the Executive Committee?

A. No.

Q. When the strike was voted who was put in charge of it officially?

A. Previous to the strike we had a committee appointed that had been negotiating with the firms regarding a settlement. This committee was to act in conjunction with the Executive Board in handling the strike.

Q. And that was the idea that was carried out, was it not?

328 A. And that was the idea that was carried out.

Q. And that is in existence yet?

A. Yes, that is in existence yet.

Q. How many members, Mr. Kaysing?

A. Well, there was seven originally.

Q. And you gentlemen undertook to hold yourselves responsible to your order for the conduct of this strike, is that it? A. To a certain extent.

Q. Could you give me the names of any other pickets besides those you have mentioned, whoever volunteered?

A. Well, I stated one. He has gone to work and relieved himself of duty. His name was Otto Kaufman.

Q. How long did he picket, and where?

A. He just picketed two weeks at Herkert and Meisel.

Q. Do you know whether or not Mr. Reuter ever picketed?

A. No, sir, he did not.

Q. Or Mr. Birkenmeier? A. No, sir.

Q. Mr. Ehlenbeck? A. No, sir.

Q. You say you have occasionally?

A. I have. My headquarters were at Thirteenth and I have been there since the strike took place.

Q. Michael Litke—it was here at Little but I think I have corrected that. Has Michael Litke ever volunteered?

A. Michael Litke has done a little picketing, but not with any of the manufacturers that are in Court today.

Q. Where did he picket?

A. T. L. Horn and Rice-Stix and Company.

329 Q. And John Lechmer? A. Never.

Q. He never did anything at all?

A. No, sir, not that I know of.

Q. How about Charles Morgan?

A. I didn't know the gentleman until the other day.

Q. You know now that he is a member of your organization, do you? A. I just found it out.

Q. Paul Berry?

A. The same condition applies to him: I just found out who he was.

Q. Did you find out that he was doing picket duty?

A. He is named in the affidavit, but I didn't know who he was until they pointed him out.

Q. You have heard his name in the evidence, I guess, is that it? How about Ambrose Kuntz?

A. Yes, he was picketing.

Q. Stephen Wilhelm? A. Not that I know of.

Q. Do you know him personally?

A. I know him, yes, sir.

Q. You never knew him to volunteer? A. No, sir.

Q. He could not have volunteered and you not know it, could he?

A. He could have volunteered to help out at the Stability, and I not know it.

Q. Kuntz was in charge of the Stability? A. Yes, sir.

Q. Who was in charge at Herkert & Meisel?

A. Otto Kaufman; his place was taken by Maley Colley.

Q. Herkert & Meisel, both factories? A. Yes, sir.

Q. Who was in charge at Quirks?

A. Nobody. We didn't have anything to do with Quirks or the Sample Case Company, H. A. Kolb.

330 Q. You didn't bother those people much?

A. There was never any pickets there.

Q. Who was in charge of the pickets at Murphy's?

A. Leonard Burg.

Q. It is L. Burg on the bill here.

A. He is now out of the business also.

Q. Who took his place? A. Nic Paul.

Q. Nic Paul is a trunk man and a member of the Union, is he? A. Yes, sir.

Q. And now is in charge at Murphy's.

A. We have no more pickets on for the last three weeks. There was nobody to take the place. Our men were all working, and we had no pickets.

Q. So for the last three weeks you haven't done anything. Who has the authority to call those men off: May the Executive Committee call them off if it is desires, if the Committee thinks it for the best interests of the association?

A. Well, the Executive Committee, if they saw in their own judgment that these men were hurting our cause we could tell them to stay away; whether they would follow it or not would be another thing.

Q. I see, but the assumption is that they are subject to the orders of the Executive Committee; in other words, if you see that a man is committing violence and you take him off, you expect him to come off, is that it? A. Certainly.

Q. Walter Dechant: Do you know him?

A. I don't know him.

Q. You know this Esther back there?

A. I know her.

331 Q. And Miss Wielandy: I believe you said you know her? A. I know her.

Q. Malley Colley? A. I know him.

Q. Walter Fleher, has he volunteered?

A. I know the name, but I don't know the man himself.

Q. Do you know him in a general way—

A. I know he is a member of this organization, but I couldn't point him out.

Q. I believe you named the name of Thomas Halliburton?

A. Yes, sir.

Q. Was he in charge of any of the pickets?

A. At one time he volunteered to handle [to] situation around Herkert & Meisel, at Thirteenth and Chestnut.

Q. J. Perry—I won't say that I have the first initial right, but the last name is Perry, anyhow: Do you know J. Perry?

A. I don't know him. I know Banty Barry.

Q. You have already been asked about him, I believe? John Remstedt; Did he ever volunteer?

A. I don't know him at all.

Q. Charles Ruben? A. I don't know him.

Q. Henry Schnitze? A. Also unknown.

Q. You don't know him? A. I don't know him.

Q. Theodore Summers? A. I don't know him.

Q. Charles Tadesco? A. I know him.

Q. Did Charles Tadesco ever volunteer?

A. Not that I know of.

Q. Do you know whether he has ever picketed?

A. I don't think he has.
Q. Do you know where he was employed before this trouble?
332 A. I believe at Herkert & Meisel.
Q. Fred Teucher?
A. I don't know him, either. I know the name of these men, but I don't know them personally.
Q. You know they are members of the organization?
A. I know they are members of the organization.
Q. Ray Watke? A. Same case: I don't know him.
Q. Walter Webber? A. I don't know him, either.
Q. John Zimmerman? A. No.
Q. Herman Dieckhorner?
A. I know Herman Dieckhorner.
Q. Where was Herman in charge?
A. No place that I know of.
Q. Was he not in charge of Fifteenth and Pine of Herkert & Meisel? A. Not that I know of.
Q. Did he ever volunteer? A. No, sir.
Q. Was he ever a picket that you know of?
A. Not that I know of.
Q. Joe Koob? A. I don't know him.
Q. William Balmer? A. I don't know him.
Q. Robert Ginner? A. I know Robert Ginner.
Q. Was he a volunteer? A. Not that I know of.
Q. Tom Cato? A. I know him.
Q. Did he volunteer? A. No, sir.
Q. He was not a picket?
A. No, sir, he was not a picket.
Q. How do you know he was not?
A. Well, because I made it my particular business to see that he wasn't a picket.
Q. You didn't want him for a picket. Frank Cato?
A. I know him also.
Q. What was his standing as a picket?
A. He was no picket.
333 Q. Rudolph Koob? A. I know him by name.
Q. What was he doing?
A. No, picket, as far as I know.
Q. Anton Pauley? A. I don't know him.
Q. Leon Pauley? A. I don't know him.
Q. Robert Wersing? A. I don't know him.
Q. Steve Zoeller? A. I know Steve Zoeller.
Q. Where was Steve picketing?
A. He was not picketing at any place.
Q. He never volunteered?

A. He never volunteered.
Q. Tony Lanson?
A. Never volunteered; never picketed.
Q. Annie Stecker? A. I don't know her.
Q. Do you know Gus Henninger? A. No, sir.
Q. Do you know George Wenk? A. No, sir.
Q. How long have you ben a member of No. 66?
A. Myself?
Q. Yes. A. Three years.
Q. How many members are there in that Local Lodge?
A. At the time of the strike there was eight hundred and fifty, maybe a few more or a few less.
Q. How many men went out?
A. How many went out?
Q. Yes. A. All of them.
Q. Have you paying benefits to those men?
A. Strike benefits?
Q. Yes. A. Yes.
Q. But you didn't pay any man as a picket, did you?
333a A. Paid them extra for picketing?
Q. No; did the pickets get any money at all from any source?
A. Yes, they got their strike benefits the same as that.
Q. What did that amount to?
A. Seven dollars for married people, five for single, and—
Q. What were their hours on the picket line?
A. They had no hours.
Q. Was there ever any suggestion made as to how they should picket, or what they should do, or how long they should stay there?
A. When they volunteered to do picket duty, it was a volunteer proposition. They volunteered to handle the situation at the respective factories. Now, what hours they stayed there or left, I don't know.
Q. Did not you or the Executive Committee keep watch over them to see whether they would behave in a proper way or whether they would disobey the law, or the laws of the organization?
A. We naturally received reports once in a while in regard to what happened at the various factories; at every meeting they probably made reports once in a while.
Q. You went on the picket line yourself to see what was going on? A. No, sir.
Q. You never went on any picket line?
A. P. C. Murphy's, I was there every day; not on the picket line but in the vicinity.

Q. You have no personal knowledge of who assisted those captains at the various factories, have you?

Q. Who was listed?

334 Q. No; who assisted them, who was assisting them?

A. No, sir. On one or two occasions I may have found out that another man was helping out at a certain factory.

Q. Take a picket like Malley Colley, who was picketing at Herkert & Meisel if I understand you rightly: You never knew how many men volunteered or went to help Mr. Colley, did you? A. No.

Q. You didn't bother about that?

A. We had no system at all.

Q. And the same is true in regards to Mr. Kuntz down at the Stability? A. Yes, sir.

Q. And that held good at the various places except where you were, at Murphy's?

A. I do know about Murphy's.

Q. But as far as the other factories are concerned, you are not in a position to state. That is all, sir. By the way, have you any private means, Mr. Kaysing, in the way of Real estate, or anything of that kind?

A. No, sir, no real estate.

Q. I don't mean at all to inquire into your personal business, but it is a requirement, I suppose. You have not any large amount of property or money? A. No, sir.

Mr. Leahy: We will admit that.

Redirect Examination

By Mr. Leahy:

Q. Mr. Kaysing, you spoke about some of the members of your organization volunteering to picket: You didn't have regular pickets, did you? A. No, sir.

Q. Many of the men, I understand, who quit work went

335 to work in some other place, did they?

A. Yes, sir.

Q. And that was the reason why they couldn't go on picket duty?

A. We couldn't get pickets if we wanted them; We didn't have the—

Q. Mr. Schilling's name has been mentioned: What position does Mr. Schilling hold in the National organization?

A. Vice-President and General Organizer of the International Union.

Q. Does he come around here occasionally to supervise the affairs of the Local Union?

A. No, sir. He may give us a visit once in a while to see how we are getting along.

Q. A little previous to the strike he was in the City, I understand? A. Yes.

Q. Do you know what was the condition of his health at that time? A. Very bad.

Q. Was he confined to his bed?

A. Not immediately, but a week or two after he arrived here he was confined to his bed.

Q. Did he participate in any way in this strike, either by attending meetings or otherwise?

A. When the strike was called he was present at that meeting.

Q. But outside of that? A. No, sir.

Q. He does not reside here in St. Louis, does he?

A. No, sir.

Q. Now, Mr. Birkenmeier, who is one of the Defendants here: He is the business agent of the Local, is he not?

A. Yes, sir.

Q. Had he any connection with the strike, or pickets, or anything of that kind? A. No, sir.

336 Q. Is that outside of the line of his duty?

A. Yes, sir.

Q. Has he ever to your knowledge interfered in any way in giving any directions to the pickets?

A. Not that I know of.

Q. Or taken any step of that kind? A. No, sir.

Q. You have two meeting places, one is down on Chestnut Street, Tenth and Chestnut, and the other is at Thirteenth and Chestnut, as I understand?

A. Our general headquarters are 1007 Chestnut, and our meeting hall is at Thirteenth and Chouteau.

Q. And when you have meetings at Tenth and Chestnut Street, you sometimes leave there and you go down to the hall at Thirteenth and Chouteau Avenue?

A. Yes, sir.

Q. And that is about a block from P. C. Murphy's establishment? A. Yes, sir.

Q. I don't know whether I asked you in the Direct Examination as to what, if anything, was said to these men that volunteered, by you or by anybody else that was present at the meeting, as to what they ought to do when they got on the picket line: If I didn't ask it, I ask it now.

A. As picket chairman I used to instruct the pickets each and every morning to stay away from violence and threats or

abuse of any kind. I told them that it would hurt our cause more than it did good.

Q. Was that mentioned in the open meeting?

A. Every meeting, yes, sir.

Mr. Leahy: I believe that is all, Mr. Kaysing.

Recross Examination

By Mr. Holland:

Q. Did you have a meeting every day, Mr. Kaysing?

337 A. No, sir; twice a week.

Q. Nobody has done any picketing of any character since his Honor issued the restraining order against you, have they? A. Not that I know of.

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338 A. M. REUTER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants, as follows:

Direct Examination

By Mr. Leahy:

Q. Will you state your name? A. A. M. Reuter.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Where did you work previous to the strike?

A. Stability Leather Goods Company.

Q. That is one of the Plaintiffs here in this case?

A. Yes, sir.

Q. How long had you worked there?

A. About two and one-half months.

Q. And your business, I understand, is that of a leather worker? A. Yes, sir.

Q. At that time were you a member of the Local Lodge or Union No. 66 of the United Leather Workers International Union? A. Yes, sir.

Q. Did you hold any official position in it?

A. Chairman.

Q. Of what? A. Chairman of Local 66.

Q. You were chairman of Local 66 and you held that office on the tenth day of April and prior thereto, and you still hold that same office? A. Yes, sir.

Q. Now, were you present on the night the strike vote was taken? A. Yes, sir.

Q. You presided, I believe? A. Yes, sir.

339 Q. After the strike vote was taken do you recollect if there was any request made for volunteers to do picket duty?

A. The request was made and there were several members got up and volunteered to do picket duty at the various plants.

Q. Do you know what, if any, instructions were given to them by you, or by Mr. Kaysing, or anybody, any one of the responsible officers of the Local, with reference to their duties?

A. No, with the exception of telling them not to have any violence or cause any trouble; to go about everything as peaceably as they could.

Q. Have you had any previous strikes in this Local?

A. No, sir.

Q. I believe this is the first that you have had?

A. This is the first that we have had.

Q. Now, have you yourself, personally, incited anybody to violence? A. No, sir.

Q. Or to the use of threats— A. No, sir.

Q. —against any of these plaintiffs or complainants?

A. No, sir.

Q. Or against the persons working in their employment?

A. No, sir.

Q. Have you spoken to any one of the employees of the plaintiffs? A. Employees?

Q. Yes. A. No, sir.

Q. With reference to their leaving the employment. Do you know of your own knowledge of any acts of violence, any threats, being made against employees of any of these
340 complainants by any members of your Local?

A. No, sir.

Q. Have you entered into any sort of a combination with anybody to injure the business of these complainants in any way? A. No, sir.

Q. You have your meetings at Thirteenth and Chouteau Avenue do you not? A. Yes, sir.

Q. That is the meeting place of the Local, that is where your hall is located? A. Yes, sir.

Q. At what time are these meetings generally held?

Q. At what time?

Q. Yes.

A. Well, an evening meeting is generally called about 8:15.

Q. And during the day?

A. They are between two and two-thirty in the afternoons.

Q. And after the meeting is over the men that attend the meetings stay outside and talk things over amongst themselves, and the women also?

A. Yes, quite often.

Q. Your hall is located at Thirteenth and Chouteau Avenue? A. Yes, sir.

Q. And there is a saloon across the street, I believe, where they congregate occasionally, too?

A. Yes, sir.

Cross-Examination

By Mr. Holland:

Q. You don't have any meetings very early in the morning, do you, Mr. Reuter?

A. Morning meetings?

341 Q. Yes. A. Not that I know of.

Q. Most of your meetings are held at what time, did you say ?

A. Between two and two-thirty.

Q. In the afternoon?

A. And evening meetings about eight or eight fifteen.

Q. In the morning at seven or eight o'clock you don't have any meetings there in that hall?

A. No, sir, we never call any meetings.

Q. And the same holds true about eleven o'clock, or around the noon hour?

A. Do we hold any meetings in the morning?

Q. Yes, around the noon hour.

A. Not that I know of.

Q. How about the afternoon, what time do you hold the meetings in the afternoon?

A. Generally about twice a week.

Q. I mean what time of day?

A. Two or two-thirty in the day.

Q. You don't hold any meetings at five o'clock, do you?

A. Calling a meeting for five o'clock in the evening?

Q. You don't hold any meetings at five o'clock, do you?

A. Not that I know of, no.

Q. You worked at the Stability on Fourth and Chouteau?

A. Yes, sir.

Q. You didn't do any picketing there yourself, did you?

A. No, sir.

Q. Do you know who was picketing there?

A One party that volunteered to picket down there was this Ambrose Kuntz.

Q. That was the man that was in charge there?

A. Yes, sir.

342 Q. Who did Mr. Kuntz work for before this trouble?

A. The Stability.

Q. And you worked there? A. Yes, sir.

Q. And you have no large or extended acquaintance with the members of your Union, have you?

A. Well, I don't know just exactly how you would—how I should answer you on that. I know quite a few of them.

Q. Do you know Rehan? A. Who?
Q. Rehan. A. No.
Q. You don't know him? A. No.
Q. You don't know any of those men who were in charge of the pickets at various places whose names you have heard, Mr.—
A. Yes, I know quite a few of them.
Q. You have never run across those men on the picket line, have you? A. No, sir.
Q. You were not in charge yourself of any picket line?
A. No, sir.
Q. At the time you held that meeting in order to vote upon calling the strike, how many members were present at that meeting, about; were there one hundred or two hundred or five hundred?
A. I would say between five hundred and fifty and six hundred.
Q. You were in the chair, at the time, were you not?
A. Yes, sir.
Q. And when the motion was carried that it was decided to call a strike, did you immediately call for volunteers, to picket?
343 A. No, sir.
Q. Who did?
A. There was no volunteers appointed at that meeting at all.
Q. Let us get down to the next meeting, then: Were you in the chair at the next meeting?
A. Yes, I think I was.
Q. Did you call for volunteers at that meeting, from the chair? A. I believe I did.
Q. And how was the response?
A. I didn't have any trouble getting volunteers at all. All I did was to call out the name of the factory we wanted a volunteer for and somebody would jump up and holler out his name.
Q. Did you name them?
A. No, sir. I asked for Herkert and Meisel, or P. C. Murphy, and somebody employed at that place would get up and say they would volunteer to go and picket.
Q. Would you say that the number of volunteers at the first meeting was pretty generous? I mean, were they willing to help you out? A. Yes, sir.
Q. What is that? A. Yes, sir.
Q. Whom did you put in charge, if you know, if you can remember, at Murphy's? A. L. Burg.
Q. L. Burg? A. Yes, sir.

Q. That man was supplanted by a man named Pauls, is that right?

A. That is something I couldn't tell you.

Q. Do you know where Mr. Burg stationed himself after the appointment, in reference to Murphy's factory?

A. No, sir.

344 Q. You never went over there to see what was going on? A. No, sir.

Q. You never got in the neighborhood?

A. No, I never got at Murphy's outside of being at Thirteenth and Chouteau.

Q. That is only a hundred feet from Murphy's shop?

A. I guess it is more than that. I would say a city block.

Q. Where that saloon is on the corner of Thirteenth? It is not any further from the corner of Thirteenth than the distance to the Chemical Building just across the street here?

A. About that.

Q. From the saloon on Thirteenth and Chouteau to Murphy's factory at Thirteenth and Papin, is that right?

A. I guess it is further than that.

Q. Well how much further? It is within a stone's throw from Murphy's factory, is it not?

A. To the south side of the factory, yes.

Q. That is what I say—

A. But that is a half a block from Papin.

Q. But I say it is not any further than the Chemical Building is from here?

A. It is the other side of the factory; it is the same distance as from here across the street.

Q. Have you ever got down on the picket line near Murphy's side on the corner, with the boys, at Thirteenth and Chouteau in front of that saloon? A. No.

Q. And you never had occasion to notice how many men were there at any time? A. No, sir.

345 Q. What was the largest number of men at any one time, at any one meeting, that volunteered to help you out in picketing?

A. There was only one meeting when we called for volunteers. To explain this thing to you properly I wish to state that we would name the factory and the man would get up and volunteer for that factory, and he was what we would call a captain. He would then go among the men at that factory and ask them to volunteer and come out the next day at certain hours and be on the picket line.

Q. So far as the executive officers were concerned, all they had to do was to appoint a captain?

A. We done no appointment—

Q. I understand, but they volunteered and then you were through with them, is not that right? A. Yes, sir.

Q. And he went out and got his own men if they were willing to help him, is that right? A. Yes, sir.

Q. And that met with the approval of you gentlemen. It took it out of your hands? A. Yes, sir.

Q. You never gave any instructions, of course, to the pickets at all?

A. No, sir. Only with the exception of telling them to not use any violence.

Q. Whom did you tell that to?

A. We told that to the membership in general.

Q. But you didn't pick out any one person and tell him to obey the law?

A. No; just told it to the membership in general.

Q. You just said that in open meeting? A. Yes, sir.

Q. Where do you live? A. 6216A Vermont.

Q. Have you got some property or real estate in the
346 city of St. Louis? A. Well, that is another—

Q. I mean, you have no large amount of property?

A. Never have got anything.

Q. I don't mean at all to interfer into your private affairs.

Redirect Examination

By Mr. Leahy:

Q. At this hall on Chouteau Avenue and Thirteenth is a Switchman's Union: Do members of that Union meet there also? A. Yes, sir.

Q. And congregate around there? A. Yes, sir.

Q. How large a Union is that, about how many members has it?

A. That is something I couldn't tell you, but that hall is filled from time to time. I have seen as high as two hundred men stand around that corner.

Q. I understand you. Your Union has a hall hired permanently? A. Yes, sir.

Q. And you make it sort of headquarters for your members to assemble there? A. Yes, sir.

Q. And they go there at all hours of the day?

A. Yes, sir.

Q. Beginning with the morning and straight on through the day? A. Yes, sir.

Q. Is the same thing true of the Switchmen's Union?

A. Yes, sir.

Q. These men are also there? A. Yes, sir.

Q. I presume when their meetings are held they go on the outside of the hall and also congregate?

A. Congregate around there.

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347 MICHAEL LITKE, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of defendants as follows:

Direct Examination

By Mr. Leahy:

Q. Will you kindly state your name?

A. Michael Litke.

Q. How do you spell that name? A. Litke, L-i-t-k-e.

Q. What was your business on and prior to April 10th of the present year? A. Trunk maker.

Q. Where were you employed?

A. Horn Trunk, Rice-Stix.

The Court: Q. Rice-Stix? A. Now Rice-Stix.

Mr. Leahy: Were you a member of Local Union No. 66?

A. Yes, sir.

Q. Of the United Leatherworkers International Union, at that time? A. Yes, sir.

Q. And you are a member now? A. Yes, sir.

Q. What official position, if any, do you hold, and did you hold on April 10th, in connection with this organization?

A. Well, I hold no official position at all but acting as a committee man.

Q. You were a member of the Executive Committee, I understand?

A. Just acting as a committee man during the strike.

Q. Were you present at the meeting at which the strike vote was taken? A. Yes, sir.

Q. Did you hear any members volunteering to picket at that time? A. Yes, sir.

348 Q. Do you know the instructions that were given to them by the presiding chairman, or any other person attending that meeting, with reference to their duties?

A. Their instructions were given to have no violence.

Q. Did you do any picket duty yourself?

A. No, sir.

Q. Did you intimidate anybody? A. No, sir.

Q. Or threaten anybody? A. No, sir.

Q. Or assault any person? A. No, sir.

Q. I mean now any employe, any person working for these complainants? A. No, sir.

Q. You never were in front of any of their various factories?

A. Well, I was in the neighborhood. I walked around the building. I was around Murphy's building.

Q. You never talked to any one of their employes, did you? A. No, sir.

Q. Did you ever enter into any sort of a combination with anybody else to injure any of these complainant's business? A. No, sir.

Q. Did you ever hear of any violence or threats, or anything of that kind, being resorted to by any members of your organization? A. No, sir.

Q. I believe you held your meetings at Thirteenth and Chouteau Avenue? A. Yes, sir.

Q. It has been already testified that the Switchman's Union meet down there: Is that true? A. Yes, sir.

Q. And both you and the Switchmen's Union are two
349 large bodies? A. Yes, sir.

Q. And after the meeting the men congregate on the outside? A. All around that corner.

The Court: Do the Switchmen's Union use the same hall?

A. They use the hall downstairs and we are upstairs.

Mr. Leahy: And this Switchman's Union, after the meeting is over they go out over to that—

A. All over that territory.

Q. Are there any other organizations meeting in that hall, to your knowledge?

A. The structural iron workers, they meet there.

Q. Anybody else? A. The bakers.

Q. I believe that is sort of a general meeting place for many of the members of the labor unions of the City of St. Louis? A. Yes, sir.

Q. They meet there at all hours of the day. Very well, sir; that is all.

Cross-Examination

By Mr. Holland:

Q. You say they meet there at all hours of the day?

A. The switchmen are there all day long and evening, too.

Q. Do they meet there in the morning? A. Yes, sir.

Q. You don't know what time they hold their meetings, do you? A. All day long.

Q. You are not there much, are you?
A. What is that?
Q. You are not there much, are you?
A. I have been around that neighborhood three and
350 four hours a day, five hours a day.
Q. Every day? A. Every day.
Q. You are not on strike at all, are you?
A. Yes, I am on strike.
Q. Are you not working for Horn?
A. No, sir, I am not working at all now.
Q. I understood you to say you are working for Horn, and that Horn wasn't out.
A. Horn is out, the same thing as the rest of the manufacturers.
Q. Are they all out, you say? A. Yes, sir.
Q. You have no method of finding out, you don't know what time the switchmen hold their meeting down there?
A. Well, they are there all day long. I don't know what time they are in sesison, but they are there all day long.
Q. What time do you go there in the morning?
A. I got there around eight, nine or ten o'clock sometimes.
Q. Do you stand on the sidewalk where the switchmen stand over at that place on the other side, or do you take a position at the north side?
A. I am over there and when I am on this side I patronize that man on this corner in that saloon.
Q. You know pretty near all of the Union members, do you not? A. No, I do not.
Q. You know a good many of them?
A. Not so many of them.
Q. How many of them have you seen around that saloon at the corner, and around Papin Street?
A. I don't know whether there is over twenty of them
351 at one time in the saloon and on the corner.
Q. You are not talking of switchmen, you are talking of trunk men, are you not?
A. I am talking of trunk men.
Q. You spend, you say, three or four hours a day there at different intervals: You don't spend three straight hours a day there at any time, do you? A. No, sir.
Q. You come there at various hours in the day?
A. Oh, yes.
Q. What hours are you usually there?

A. Just as I get through; say eight or nine o'clock—ten. I may go down and back again. I won't say I have regular hours there.

Q. Do you ever come there at noon time?

A. Noon time?

Q. Yes.

A. Yes, I have been there at noon time.

Q. Do you ever get there in the afternoons?

A. Yes, sir.

Q. What time?

A. Our meetings are in the afternoon and I am generally there for the meeting.

Q. Do you go at the corner of Murphy's there, at Thirteenth and Chouteau, in the evening?

A. Well, I am never there, in the evening.

Q. You are there in the morning and noon time?

A. After our meeting I leave there.

Q. Do you go there every day? A. Yes, sir.

Q. When were you last there?

A. I was there this morning.

Q. Were you there yesterday? A. No, sir.

352 Q. You don't know of any violence, or anybody being insulted at all, do you? A. No.

Q. You were not there all the time?

A. No, I went every other day.

Q. At any time were you a captain of any of those pickets?

A. No, sir.

Q. Mr. Leahy asked you what instructions were given: What instructions did you get from the chairman of the meeting? A. To use no violence.

Mr. Leahy: He says he was no picket.

Mr. Holland: He says he was instructed not to use violence.

Q. Who told you that?

A. Nobody. I said the chair instructed the members.

Q. Who is the chairman of that?

A. Mr. Reuter had the chair when we first went out, and when he—

Q. Don't you know he never told you in the world not to use violence?

A. It was the instruction of the chair.

Q. Did he ever tell you? A. No; I didn't say—

Q. Do you know the name of any man that he did tell?

A. No, I do not. He instructed all the members, including everybody.

Q. You don't know now whether anybody coming to work at Murphy's, or going from work, or working there, was abused or called names, or interfered with in any way?

A. No, sir, I don't.

353 Q. You don't know a thing about it?

A. I haven't seen anybody.

Q. And the only one you can talk for is yourself?

A. For all that I have seen around there. I haven't seen anything happen

Q. Did Reuter ever tell anybody a second time, or more than one meeting, to live within the law?

A. Every meeting.

Q. You don't know why he did that, do you?

A. That is our policy.

Q. Has he had any reports brought to him that anybody had been disobeying the law? A. I didn't get you.

Q. Did anybody bring a report to him, to Mr. Reuter, that some of the pickets had ben breaking the law?

A. No, sir.

Q. Do you know why he admonished them the second time not to commit any overt act?

A. Well, it is a usual thing for the chair to instruct every member at every meeting; to instruct them all at every meeting.

Q. Don't you know that in every lodge you have your regular order of business? Could you tell me what order of business that comes under, instructing pickets?

A. For the welfare of the organization.

Q. For the good of the order? A. Yes.

Q. Under that heading they instruct you boys how to conduct yourselves? A. That is it.

Q. Where do you live? A. 4624 Nebraska Avenue.

Q. You have no real estate? A. No, sir.

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354 JOHN STETSON, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. State your name. A. John Stenson.

Q. What is your business?

A. In the last place I worked for P. C. Murphy in the shipping department.

Q. You are a leatherworker?

A. I belong to the Leatherworkers Union.

Q. You belong to the Local Union No. 66 of the United International Leatherworkers Union?

A. Yes, sir.

Q. Did you belong to that organization on and prior to April 10th, of the present year?

A. Yes, sir.

Q. And you say you were working at the P. C. Murphy Trunk Company? A. Yes, sir.

Q. At the time you were a member of the Local Union?

A. Yes, sir.

Q. And you left on or about the 10th of April?

A. Yes.

Q. Now, to your knowledge, were all the rest of the men that left with you, members of the same Local?

A. Yes, sir.

Q. They all quit at one time? A. Yes, sir.

Q. Did you attend the meeting that the Local called at the time that the strike vote was taken? A. Yes, sir.

Q. And subsequent meetings? A. Yes, sir.

Q. Did you hear any instructions given to any of the
355 volunteers with reference to doing picket duty?

A. Why, I heard them instructing the men not to use no violence, or anything like that, to be peaceable, at the meeting.

Q. These meetings I understand were held at Thirteenth and Chouteau Avenue? A. Yes, sir.

Q. Did you ever do any picket duty? A. No, sir.

Q. Did you ever intimidate anybody? A. No,sir.

Q. Any employe of the P. C. Murphy Trunk Company, of any of these complainants? A. No, sir.

Q. Or try to stop them from working? A. No, sir.

Q. Do you know a man named Russell?

A. I know a man by that name.

Q. What does he do?

A. He works in the shipping department.

Q. Is he a leatherworker?

A. No, sir; you couldn't call him a leatherworker.

Q. When you said he works in the shipping department, do you mean he works in the shipping department of the P. C. Murphy Trunk Company?

A. Yes, sir.

Q. Did you have any difference or altercation with him prior to the time of the strike?

A. No, sir. Prior? I had a little trouble with him about a year previous, before the strike was called; I believe about a year.

Q. That was of a personal nature, I understand?
A. Yes, sir.
Q. Did you ever meet him on Chouteau Avenue, or
356 anywhere else, since the strike?
A. No, sir, not to talk to him. I have seen him on Chouteau Avenue, but not to talk to him.
Q. Did you ever say anything to him when you met him on Chouteau Avenue, or saw him? A. No, sir.
Q. Did you ever threaten him? A. No, sir.
Q. Or try to intimidate him from working? A. No, sir.
Q. When you saw this man on Chouteau Avenue at that time did you observe what his condition was with reference to sobriety?
A. He looked like he was drunk. I seen him getting off the car. I was setting in Judge Rice's office, and then I kind of directed my attention—there was three or four other people and he was chewing the rag and acting the fool. He was across the street from where I was. I was sitting in Judge Rice's office. He is a very large man.
Q. Is Russell a drinking man?
A. Yes. They only hired him there because they couldn't get anybody else. They used to have to fire him every three or four weeks because they could not depend upon him; he was drunk.
Q. So far as you could observe his condition on this particular occassion he seemed to be—
A. It was the day previous to the bond election—I believe that was the 11th of April, and he was across the street from where I was sitting. I was sitting in Judge Rice's office.
Q. Did you see him after the strike?
A. Did I see him after the strike.
357 Q. Yes. A. I seen him on that day previous to the bond election. That was previous to the strike.

The Court: You mean the 10th of May?

A. Yes, sir; that has been a couple of weeks ago.

By Mr. Leahy:
Q. You say at that time he was a distance from you?
A. Yes, sir.
Q. You, yourself, if I understand you, never tried to intimidate anybody?
A. No, sir; I don't believe in that.
Q. You never used any vile language to any one of the complainant's employes? A. No, sir.
Q. Did you ever try to prevent any of these employes from continuing in their employment? A. No, sir.

Q. Did you ever enter into any controversy with anybody—

A. No, sir.

Q. To injure the business of the complainants, or prevent anybody working there, or to interfere with their interstate business? A. No, sir.

Cross Examination

By Mr. Holland:

Q. You say that this man Russell—is that his name?

A. I don't know. I believe that is his name, Russell. That is the name I think he goes by at the Trunk Company.

Q. You have worked with him, have you not?

A. Yes, I have worked with him.

Q. Side by side with him?

A. Well, in the same establishment, yes.

Q. For how long?

A. Well, he never did work very steady. I couldn't
358 tell you how long. Off and on, I guess, for the last three or four years. He never worked but a week or two there, because he would get drunk. The boss would throw him out.

Q. He was an habitual drunkard? A. Yes, sir.

Q. On the 10th, did you see this man Russell?

A. Yes, across the srteet.

Q. You were in the office of the Justice of the Peace?

A. 911 Chouteau Avenue.

Q. Talking to the constable?

A. I didn't say I was talking to the constable. I told you I was sitting in the office.

Q. This Justice's office that you talk about is exactly three doors east of Twelfth Street bridge on Chouteau?

A. Yes, sir.

Q. On the north side of the street? A. Yes.

Q. And you say this man Russell got off the car; you saw him?

A. Yes, he got off the Tower Grove or Cherokee—it may be a Tower Grove. There is three car lines stop on this side of the street, going north.

Q. You don't know which?

A. I seen him stagger off the car. I never paid that much attention. It was either a Cherokee or—

Q. You were on the north side of the street, in that building, on the first floor of that building where Judge Rice keeps his office? A. Yes, exactly.

Q. And you saw this old man, Russell, get off the car?

A. Stagger off the car, yes.

Q. You never went out to meet him, did you?

A. No, sir.

359 Q. And he didn't see you at all, so far as you know?

A. He may have; I don't know. I don't know whether he seen me or not. I guess if he was sober he might have seen me, but under the conditions he was in he didn't see me.

Q. He didn't come north over across the street?

A. No; he was standing there and making a fool of himself, and some people were laughing at him.

Q. How many people were laughing at him?

A. Three or four, standing there.

Q. You didn't know who they were? A. No.

Q. As far as you know they were strangers? A. Exactly.

Q. And they made fun of this old man, Russell?

A. He was making fun of himself; he was making fun of himself, the way he was acting; merely smiling, I guess.

Q. You never came out and bothered him.

A. No; I didn't bother him.

Q. You sat in the office all the time and saw the old man making an exhibition of himself? A. Yes.

Q. Do you know where he lives? A. I do not.

Q. You don't know which way?

A. Down close to the levee somewhere. I never was down there.

Q. Who told you that?

A. I heard him say that one day when he was working in the shop.

Q. You heard him say that one day while he was working in the shop, that he lived on the levee? A. Yes.

Q. You don't know whether he is a man of family or

360 not?

A. I heard him say around the shop that he was single. I don't know the man. I never was around his house.

Q. You don't know whether he worked for Murphy for thirty-five years or not?

A. Oh, no. He has worked there off and on, but he never held a job long because they would fire or can him about every Monday, when he would get drunk.

Q. They were continually hiring him and firing him, is that right? A. Yes.

Q. They would fire him today and take him back tomorrow?

A. Yes, if they needed a man. They wouldn't put him on unless they couldn't get anyone else.

Q. That has continued for thirty-five years.
A. For quiet a while. I didn't say for thirty-five years.
Q. How long have you worked there? A. Four years.
Q. You say you had trouble with that old man?
A. I had a little trouble with him about a year ago.
Q. Yes? A. He ain't much older than I am, though.
Q. You say he is a common drunkard?
A. Exactly. I said that.
Q. How did you happen to get into trouble with a common drunkard?
A. He was about half-shot; used vile language toward me and came up towards me like to strike me, and of course I protected myself.
Q. He fell short, did he?
A. I made him fall short, I guess.
Q. You got in ahead of him, you countered? A. Yes.
361 Q. He was drunk, too, wasn't he?
A. He might have had drinks in him. You know everybody should know how to keep their place.
Q. What I want to know is, when he attacked you in the factory, whether he was drunk or sober?
A. Well, now, he had some drinks in him. It was on Monday—every Monday he would come in about half drunk, as a rule. The man who ain't much, I don't talk to that kind of people at all.
Q. But you took a good deal of interest in looking out from Mr. Rice's office to see the people making fun of him?
A. It was a nice big, clear window. I would rather look out of the window than look up against the wall.
Q. How long did he stand there with those men looking at him? A. Fifteen or twenty minutes.
Q. You saw them all that time? A. Yes.
Q. After that time was up where did he go?
A. If I ain't mistaken, I think he got a Fourth Street car going east. I couldn't say whether he took it. I saw him walking out like he was going to take a Fourth Street car.
Q. What became of the men that were making fun of him?
A. I never paid any attention. They might have been waiting for the car, too.
Q. But you did keep particular track of old man Russell?
A. I told you—I don't know whether he got the car, but I think he got the car, because I couldn't see, because I was on the opposite side of him. I couldn't see between him and the car.
362 Q. Don't you know of your own knowledge, that he didn't do anything of the kind?

A. Well, I seen him with my own eyes, because the glass it was clean; you couldn't help see from it.

Q. You don't know whether he got off a Cherokee or Tower Grove?

A. I told you I didn't; I didn't know whether he got off the Cherokee or Tower Grove, but I know he got off one of them.

Q. And you don't know whether he took a Fourth Street Car?

A. You asked me where did he get it, and I told you—i said I thought that he took a Fourth Street car going east, but I wouldn't say I knew it.

Q. You won't undertake to say that he didn't go west and go to Murphy's factory?

A. No, I don't know which way he went. I said he looked like he was going to catch a Fourth Street car going east.

Q. I am not asking what he looked like.

A. You just now asked me do I know what way he was going. east or west, and I said Murphy's Trunk Company would be west from where he was standing, but I thought he went east.

Q. Will you undertake to say he didn't go to Murphy's factory?

A. I don't know which way he went, but I thought he took the Fourth Street car going east.

Mr. Leahy: I fail to see the relevancy of all these questions, except to take up a lot of time.

The Court: What is that relevancy?

The Witness: I have never been around the factory.

363 Mr. Leahy: Wait a moment.

The Court: The question is whether on this occassion, or any other occasion since this strike was going on, he called him a scab, or applied to him any other vile and opprobious epithet, and whether he told him he was coming down to his house or not.

Mr. Holland: I was merely trying to show his credibility. That was all, your Honor.

The Court: If it has any relevancy you may inquire.

Mr. Holland: I won't keep him very much longer, your Honor.

Q. Do you know the names of those men that were talking to him on Twelfth and Chouteau?

A. I told you I did not.

Q. Do you know whether they were members of the Union or not?

A. I know they was not, because I know all the members by sight.

Q. Do you know every Union man that belongs to Local 66? A. I don't know them personally; I know them by sight, their face is familiar to me.

By The Court:

Q. Did you have any conversation with this man, Russell, on that night? A. No, sir, Judge.

Q. Have you had any conversation with him since this strike began? A. No, sir, Judge.

Q. Then you didn't call him a scab at all—

A. No, sir, Judge; I don't use that kind of language.

363a That ain't my practice.

Redirect Examination

By Mr. Leahy:

Q. You didn't threaten to go down to his house?

A. No, sir. I wouldn't go in that kind of neighborhood, anyway. I would be scared to go around there; it wouldn't be safe.

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364 MALLEY COLLEY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. Will you state your name, please?

A. Malley Colley.

Q. What is your business? A. Suitcase maker.

Q. Are you a leather worker? A. Yes, sir.

Q. Where were you employed on and previous to April 10th, of the present year?

A. Herkert & Meisel.

Q. You have been there how long?

A. About eight years.

Q. You were a leather worker there in the employment of Herkert & Meisel.

A. Yes, sir.

Q. At that time you were also connected with Local Union No. 66, were you not? A. Yes, sir.

Q. And when you left, I believe all of the other leather workers left with you on the same day? A. The same day.

Q. All of these who were members of the local union? Now, after the strike was declared did you ever go down to Herkert & Meisel's place of business? A. Yes, sir.

Q. Did you ever do any sort of picket duty down there?

A. I was down there a little bit once in a while, maybe an hour in the morning.

Q. How many days were you there?

365 Well, I was there about three weeks altogether.

Q. How many were with you at that time?

A. Well, sometimes two and sometimes three.

Q. Was there ever more than three?

A. Well, there was six at the most, at one time.

Q. These three men that you have reference to, where were they standing with reference to the plant of the Herkert & Meisel Company?

A. They would walk up and down, and they was standing up on Twelfth Street, just a block away from the building. There was a garage between the plant and the building.

Q. The first three men that you have reference to as pickeets, were they in the vicinity of the Herkert & Meisel Trunk Company, and the other three at the corner?

A. Yes. They never—

Q. Did you observe any large groups of pickets assembled right around that place at any time?

A. Well, once in a while they would meet, but they would keep walking up and down.

Q. I didn't ask you that; I asked you whether any large groups congregated there?

A. There probably would. They were not our members; they were outsiders demonstrating every day, and drawing a big crowd at the time.

Q. I am asking about your own members: Of your own members? A. No, sir.

Q. Did you while you were there around that factory use any vile language towards any person? A. No, sir.

366 Q. Did you try to intimidate anybody?

A. No, sir, I never said anything to nobody unless they asked me; if they came up and asked me if there is a strike on, I said, "Yes." One man said, "They told me on the inside there was trouble, but it was all settled." I thought I would do the right thing to tell the truth.

Q. What did you say to any person at the time that you were doing picket duty at this factory of Herkert & Meisel?

A. I never did say anything to anybody, to nobody, outside of the one on that street car.

Q. Up at the factory you never said anything to any person or interfered with anybody going in or coming out of that factory? A. No, sir.

Q. You spoke about the street car: Did you happen to meet one of these boys that testified today, on the street car?

A. Yes, sir.

Q. What did you say to him?

A. I says, "Are you working at Murphy's?" I was coming over the bridge and he got in the same car which I got on. He says, "Yes." I says, "Do you know there is a strike on?" He says, "Yes, I found out today." That was Friday. "I wanted my money, but Leo Murphy wouldn't give me my money; but I want to quit."

Q. Did you ever threaten him? A. No.

Q. I don't believe he said you did. How many days were you on the picket line out there at Herkert & Meisel?

A. About three weeks.

Q. And how many hours of the day?

A. Oh, two or three hours, at the most.

367 Q. During the time that you were present on these occasions that you have stated, have you ever yourself used any vile language towards any person going in or coming out of that factory? A. No, sir.

Q. Or threatened and intimidated them? A. No, sir.

Q. Did you ever hear anybody else, any member of your Union— A. No, sir.

Q. —who was with you, use any language of that character— A. No, sir.

Q. —towards any person going in or coming out of that factory, or try to intimidate them in any way? A. No, sir.

Q. Did you ever see anybody assault anybody else?

A. No, sir.

Q. So far as you saw, all the proceedings were of a peaceful and orderly nature? A. Yes, sir.

Cross Examination.

By Mr. Holland:

Q. You were not there all the time, were you, Mr. Colley?

A. Not all day, no, sir.

Q. What were your hours there?

A. I generally got there in the morning, maybe for an hour or two.

Q. Afternoon? A. No, sir I never was there.

Q. I understod you to say that you had several assistants there, five or six, did you, occasionally?

A. Yes. They were there two or three hours a day to give me relief.

368 Q. Do you know what their names were? A. Well—

Q. Do you know Gus Templemeier?

A. Gus Templemeier?

Q. You don't know him, do you? A. No.

Q. You don't know a man named John Wolken?

A. I know him, but I think he works up at the other factory.

Q. Do you know Brown Yamis?

A. I know him, but they were up at the other factory, not where I was at all.

Q. They were at Fifteenth and Pine. Do you know Melvin Thurber? A. No.

Q. You don't know John Lampert? A. No.

Q. Will you give the Court the names of the men who were helping you there? A. Henry Schnitze.

Q. Who? A. Henry Schnitze and Robert Webber.

Q. Who else? A. Ray Watke.

Q. Who else?

A. Well, that was practically about all I know, unless I would hear their names.

Q. William Bruns? A. No, I don't know him.

Q. Louis George, H. Laskowitz? A. I don't know him.

Q. Nic Pauls? A. I don't know him.

Q. William Wachter? A. I don't know him.

Q. Louis Joyce? A. I don't know him.

Q. L. Burg? A. I don't know him.

Q. You don't know Burg at all, do you? Did you know Burg was captain of the pickets up there before you?

A. Burg?

Q. Burg. A. I don't know him.

369 Q. Do you know Oglesby? A. I know him.

Q. Rehan: Do you know him? A. No.

Q. William Hoffman? A. No.

Q. You don't know him. F. Stein? A. No.

Q. R. Klyberger? A. No—I know Klyberger, yes—

Q. Was he one of your men? A. No.

Q. What did he do? A. He works at Murphy's.

Q. G. Feldkamp? A. I know him.

Q. Al. Slagle? A. I don't know him.

Q. Anna Howard? A. I don't know her.

Q. Do you know those two ladies that were picketing there?

A. Yes, sir.

Q. What were their names?

Mr. Leahy: Let me suggest this to you, Mr. Holland: I think you are calling off the list of employes in some other place.

Mr. Holland: I know I am.

Mr. Leahy: He only knows the men that were working at Herkert & Meisel.

Mr. Holland: I know, but the men who were picketing were working at other plants. That has been testified to by one of your two men.

Mr. Leahy: If he knows.

By Mr. Holland:

Q. Do you know Michael Litke? A. No.
Q. John Lechner? A. I don't know him.
Q. Charles Morgan? A. I don't know him.
Q. Paul Berry? A. Paul Berry?
Q. Was Paul Berry one of your men? A. No.
370 Q. Where did he picket? A. I don't know.
Q. You don't know whether he picketed at all or not, do you? A. I don't know whether he did or not.
Q. You don't know whether he abused anybody or not?
A. I never seen him.
Q. Do you know Edward Schilling? A. I know him.
Q. He is the man from Kansas City?
A. I don't think he is.
Q. Where is he from? A. He is from Chicago.
Q. Do you know Ambrose Kuntz? A. I know him.
Q. Is he a picket? A. I suppose he is.
Q. Where? A. Pottmeier's, Stability.
Q. Stephen Wilhelm? A. I know him.
Q. Where is he a picket? A. Stability.
Q. Walter Dechant: Where does he picket?
A. I don't know him.
Q. Esther Bradley? A. Herkert & Meisel.
Q. She is one of your pickets?
A. She was from Herkert & Meisel's.
Q. Walter Fleher?
A. He worked at Herkert & Meisel. I don't know whether he picketed or not.
Q. You were there all the time, in charge, weren't you?
A. No, not all the time.
Q. Were you not in charge of the pickets?
A. Not all the time.

Q. Were you not in charge of the pickets?
A. Yes, at some time I was, but not all the time.
Q. Who was in charge in your absence?
371 A. Well, I was working when they were picketing.
Q. After you became captain?
A. I always was captain.
Q. You were captain of the pickets. Did Walter Fleher ever work there under you? A. No, sir.
Q. Thomas Halliburton? A. Yes.
Q. He was a picket? A. Yes, sir.
Q. J. Perry? A. Yes, sir.
Q. He was a picket, John Remstedt?
A. Yes, he was a picket.
Q. Charles Reuben? A. I never seen him picket.
Q. Did you ever see him around there?
A. Yes, he would walk up and down Twelfth Street. I run into him lots of times.
Q. That is at Herkert & Meisel's factory? A. Yes, sir.
Q. How far from the factory?
A. It is a block from the factory.
Q. Henry Schnitze?
A. Yes; he picketed after I was gone.
Q. He picketed after you left there. Benjamin Schnitze, did he picket? A. Yes, sir.
Q. What? A. Yes, sir.
Q. Theodore Summers: Did he picket? A. Yes, sir.
Q. What was your answer? A. Yes, sir.
Q. Charles Tadesco?
A. Well, I don't know whether he picketed or not.
Q. Have you ever seen him around there? A. No, sir.
Q. You never did? A. No, sir.
Q. Fred Teutschert? A. I don't think he picketed.
Q. Sir? A. I don't think he did.
Q. You don't know whether he did or not, do you?
A. No.
372 Q. Ray Watke: He picketed? A. Yes, sir.
Q. Walter Weber: Did he picket? A. Yes, sir.
Q. John Zimmerman? A. Yes, sir.
Q. Did he picket? A. He picketed.
Q. Herman Dieckhorner?
A. I don't know whether he done any or not.
Q. I beg your pardon? A. I say I don't know.
Q. Have you ever seen Herman Dieckhorner at the factory of Herkert & Meisel on Fifteenth Street, or Thirteenth Street, at any time? A. I don't remember. I don't think I did.

Q. What is that? A. I don't think I did.
Q. You wouldn't be sure whether you did or not?
A. I am not sure.
Q. He was one of your men? A. No.
Q. Joe Kuhn? A. No.
Q. William Balmer? A. I don't know him.
Q. He was not a picket? A. I don't know him.
Q. Robert Ginner?
A. I don't think he done any, either.
Q. Do you know him? A. I know him.
Q. You are not sure whether he did or not?
A. I know he didn't when I was there.
Q. He didn't? A. No.
Q. Tom Caito? A. Yes.
Q. And Frank Caito, he picketed? A. Yes.
Q. Rudolph Koob? A. I don't know him.
Q. Anton Pauley: Did he picket?
A. I don't know him.
Q. Leo Pauley? A. I don't know him.
373 Q. Do you know Robert Warsing? A. No, sir.
Q. Steve Zoeller? A. I don't know him.
Q. Steve Zoeller? A. No.
Q. Tony Sanson?
A. I know him, yes, but I don't know whether he done any picketing or not.
Q. You are not sure whether he did any picketing or not? A. No.
Q. Have you ever seen him around there at all? A. No.
Q. Do you know Annie Steckel? A. No.
Q. You don't know her? A. No.
Q. Sylvester Schnitz? A. I know him.
Q. Did he picket? A. Yes, sir.
Q. He picketed? A. Yes.
Q. Gus Henninger? Do you know him? A. No.
Q. You don't know him. Do you know George Wenk?
A. Who?
Q. George Wenk? A. No, I don't know him, either.
Q. What part of the city do you live in?
A. 3520 North Fourteenth Street.
Q. You own your own property there?
A. What I have on my back is all I own.
Q. You don't own any real estate. That is all.

374 PAUL BERRY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of defendants as follows:

Direct Examination

My Mr. Leahy:

Q. Please state your name. A. Paul Berry.

Q. Mr. Berry, what was your business at and prior to April 10th, of the present year? A. Suit-case maker.

Q. Leather worker? A. Yes, sir.

Q. Where did you work?

A. Quirk Trunk Company.

Q. And on that date did you leave the employment of the Quirk Trunk Company? A. Yes, sir.

Q. With a number of other employes who were leather workers and members of Local Union or Lodge No. 66?

A. Yes, sir.

Q. You were a member of the Local Union at that time, were you? A. Yes, sir.

Q. And after the strike was declared did you ever go down to Quirk's factory?

A. Yes, I went down to the store that evening and waited for some of the men to come out, to notify them that the strike was on. Some of them were still working and did not know that we had gone out on a strike.

Q. Was this your business down there, to notify these men who had not come out with you, that the strike was on?

A. Well, they had told me before when they said, "If we go out on a strike, be sure and come down and let us know."

375 Q. You went down, then, to let them know about that, you say, after the strike was declared?

A. To let them know about that, yes, after the strike was declared.

Q. Did you ever do picket duty around that place?

A. I went around there every morning and every evening.

Q. Now, on any of these occasions did you stop anybody coming out of the factory? A. No, sir.

Q. Or going into it? A. No, sir.

Q. Did you use any vile or threatening language towards anybody? A. No, sir.

Q. Did you see anybody else do it? A. No, sir.

Q. How many were with you at that time?

A. Charlie Morgan.

Q. Charlie Morgan; he was the only person that was there?

A. He was the only person that was there.

Q. Just you two? A. Us two.

Q. Charlie Morgan and you in the vicinity of the Quirk Trunk factory? A. Yes, sir.

Q. Now, did you see Charlie Morgan do or say anything to anybody on any of these occasions? A. No, sir.

Q. Or anybody else? A. No, sir.

Q. Any member of your Local, did you see them stop anybody or interfere with any person who was going into that factory? A. No, sir.

Q. Do you know a man by the name of McCommis?

A. Who?

Q. McCommis, who was working for the Quirk Trunk Company, a young lad? A. Yes.

376 Q. Did you ever see him coming out of the factory?

A. I met him that Monday evening when I went down to notify the rest of the members.

Q. Did you talk to him at that time?

A. Yes. I told him that we were going out on a strike, and asked him what he was going to do, and he says, "Well, if you go out on a strike I won't go back to work."

Q. Did you ever say to him that you would break his head, or anything of that nature? A. No, sir.

Q. And call him a "scab"?

A. No, sir. In the meantime, I didn't have much time to talk to him, so I could talk to the other members, and while I was talking to one of our members, Ed Potts and Mr. Zilch came out to the doorway and he started in talking to me, and he says that he thinks Ed Potts ought not to strike, that he was foreman there. I told him I didn't think he was foreman. He asked me what I thought a foreman was. I told him that a foreman could hire and fire, which he didn't do.

Q. Which what?

A. Which he did not do, and I says, "It is entirely up to him." I says, "I just came up to notify him that we were out on strike, and it is entirely up to him to do whatever he wants to." That was all that was said.

Q. Was Morgan with you at that time?

A. Yes, sir.

Q. Did you hear Morgan say anything to this young fellow McCommis?

A. No, sir; Morgan didn't say anything to no one.

Q. Where did you meet him at that time; where did you meet McCommis? A. Where did I meet who?

Q. Where did you meet him?

377 A. Morgan?

Q. No; McCommis. A. Coming out of the store.

Q. And did you go along with Morgan after that?

A. Oh, after that we went home.

Q. And did you at any time go to the home of this boy, McCommis? A. No, sir.

Q. Did Morgan? A. No, sir.

Q. Were you ever in his home at any time?

A. No, sir, I never was and I don't know where he lives.

Q. You left Morgan on that occasion and went home. I don't know whether I asked you how long you were around that place from and after the 10th of April, of the present year.

A. I went around there about three or four days.

Q. Did you observe anybody else, outside of Morgan and yourself, that were around that place that belonged to your Local? A. No, sir.

Q. You were the only two, and during the whole time that you [are] Morgan were there, did you observe anybody interfered with as they were going out or coming into the factory?

A. No, sir; never interfered with anyone.

Q. Or hear any vile language of any kind used towards them. I believe that is all.

Cross-Examination

By Mr. Holland:

Q. You say you were with Morgan all the time, Mr. Berry?

A. Yes, sir.

Q. And at what time of the day was that?

A. That was in the evening.

378 Q. What time? A. About four-thirty.

Q. Did McCommis— A. Or five o'clock.

Q. Did McCommis belong to your Union?

A. I don't think he did.

Q. You just told us that you came over to notify the members of your Union that there was a strike called: That was the purpose of your visit there, wasn't it?

A. No, sir; there were several girls and a number of men that didn't know the strike was on.

Q. You were supposed to tell everybody that came along there, that there was a strike?

A. I told everybody that wanted to know.

Q. You told McCommis, too, did you not?

A. I certainly did, because he asked me.

Q. What did he say to you?

A. He asked me what was the matter.

Q. Who was present at the time?

A. Charlie Morgan.

Q. What were you doing, that he should ask such a question?

A. Because I was talking to some of their members.
Q. Telling them to get out?
A. No, not telling them to get out. I told them that we were on a strike.
Q. Is Morgan here today? A. Yes, sir.
Q. You don't know anything about what Morgan did at that time, do you? A. Morgan didn't do anything.
Q. How do you know?
A. Because I was doing the talking.
Q. And you and Morgan went home together, did you?
379 A. I didn't go home with Morgan, no, sir.
Q. Where did you go? A. I went home.
Q. Where do you live? A. 1631 Missouri Avenue.
Q. That is down this way? A. That is south.
Q. What car did you take?
A. I take the Fourth Street car.
Q. Where does Morgan live?
A. I don't know. I couldn't say.
Q. You don't know where Morgan lives at all?
A. No, sir.
Q. And you don't know where he went that day, do you?
A. No, sir.
Q. You don't know a thing about it? A. No, sir.
Q. You say McCommis never belonged to your Union?
A. I don't think he did.
Q. When he asked you as you say, what did you say to him??
A. I told him the truth. I told him we were out on a strike, that is all.
Q. You never told him anything of the danger of working there with you men outside?
A. No, sir, I did not.
Q. How long have you worked around there as a picket since this strike was inaugurated?
A. Oh, about three or four days.
Q. You haven't worked there since his Honor issued the order, have you?
A. No, sir; I haven't been near the place.
Q. Where do you live? A. 1631 Missouri Avenue.
Q. Do you own your home there? A. No.
Q. Have you any real estate? A. No, sir.

379a The Court: Q. You say you didn't go to the home of this boy, McCommis, and have a conversation with him in the presence of his father and mother?

A. No, sir.
Q. And you say that Morgan didn't do it, either?

A. I don't know what Morgan did.
Q. I understood you to say you were with Morgan?
A. I was with him until I went home.

Mr. Leahy: He was with him down at the factory, but he was not with him later.

The Court: Very well.

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380 CHARLES MORGAN, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. State your name, please. A. Charles Morgan.
Q. What was your business on and prior to the 10th of April of the present year? A. Leatherworker.
Q. Leatherworker? A. Yes, sir.
Q. What factory were you working at at that time?
A. Quirk's.
Q. Quirk's? A. Yes, sir.
Q. That is the Quirk Trunk Company, one of the plaintiffs in this case. I understand you were a member of the Local Union of Leatherworkers at that time?
A. Yes, sir.
Q. And you left the employment of the Quirk Company at the same time these other men did, who also were members? A. Yes, sir.
Q. Now, subsequent to that, or after the strike was declared, you and Berry appeared around that place, the Quirk Trunk Company?
A. After we went out we went over there to notify them, that is all.
Q. You went over, you say, accompanied by Berry, to notify the members of your organization that a strike was declared? A. Yes, sir.
Q. Did you so notify them?
A. Well, he told them. I didn't.
Q. How many times did you go around in the vicinity of the Quirk Trunk factory?
A. About three times.

381 Q. The first time you went there to notify the members of your Union who were in the employment of the Quirk Manufacturing Company, or Trunk Company, that a strike was declared? A. Yes, sir.

J. You went there on two other occasions, and did you also inform the persons that you saw coming out, or going in, that there was a strike declared?

A. Only once I told them—

Q. Talk louder.

A. Once I told a young lady and an old man that was working there.

Q. Did you ever during the time that you appeared around that factory use any threatening or vile language towards any person? A. No, sir.

Q. Did you ever call anybody a "scab"?

A. No, sir.

Q. Did you ever tell anybody coming out of that factory, or going into it, that they would be beaten, or anything of that kind, if they continued to work?

A. No, sir.

Q. Now, do you know a young man named McCommis, a young fellow? A. McCommis?

Q. McCommis, Herman McCommis.

A. Yes, I believe so.

Q. Did you meet this young fellow coming out of the factory at any time?

A. I met him on Chestnut Street—no, on Pine.

Q. Whereabouts on Pine? A. Twelfth and Pine.

Q. That is at a distance away from the factory, is it not?

A. One and one-half blocks.

Q. How far from the factory?

A. It is about two blocks from where the factory is.

Q. Did you have any conversation with him at that time?

382 A. Well, not exactly. We walked down the street together, that is all. I never said hardly anything to him, that I know of.

Q. Did you say anything to him about there being a strike on, or anything like that?

A. I asked him if he was going to keep on working and he said he didn't know.

Q. What else, if anything?

A. I was going down town. I walked down with him, by his house, and I stopped and told his mother about it, and she said that she wouldn't let the boy—

Q. Wait, before you get to that point. At the time you had this preliminary talk with him on Twelfth and Pine, I think you said it was, was Berry with you at that time?

A. Yes, sir.

Q. Then you and Berry parted, as I understand?

A. Sir?

Q. Then you and he parted? A. Yes, sir.
Q. And then you went with this young fellow to his house?
A. Yes, sir.
Q. Was that on your way home?
A. No, it was not on my way home, no, sir.
Q. You went with him, anyhow?
A. Yes, I was going down town and I stepped by his house.
Q. Whom did you see at the house in addition to the young fellow that came with you?
A. I seen his mother and father.
Q. And did you have any talk with her?
A. Well, I just merely told her that there was a strike there and she could use her own opinion about letting Herman work, and she said she wouldn't let him go back.
Q. Did you tell her in his presence that if he went
383 back to work there, that he would have anything done to him, or that he would have any injury done to him?
A. No, sir.
Q. Just tell us exactly what you said to her at that time.
A. I just told her that they was out on strike and if she wanted to let him go back she could let him, and she said she wouldn't do it.
Q. During the time that you were on duty down there around that factory did you ever see anybody in your presence threaten anybody else? A. No, sir.
Q. Anybody going in or coming out from that factory?
A. No, sir.
Q. Any violent language used toward them?
A. No, sir.
Q. Or anybody called a "scab?" or anything like that?
A. No, sir.

Cross-Examination

By Mr. Holland:

Q. How long have you known McCommis, Mr. Morgan?
A. I know him about a month.
Q. What? A. I know him about a month.
Q. Where did you get to know him?
A. At Quirk's Trunk Company.
Q. You got to know him at the Trunk Company?
A. Yes, sir.
Q. When you went down to his house with him and went in there and talked the matter over with his mother, she promised she would not let him go back any more, is that it?
A. Yes, sir.
Q. Berry did not accompany you to the house, did he?
A. No, sir, he did not.

Q. Was the father there? A. Yes, sir.

384 Q. You had a conversation with this little boy before you ever left the factory, did you not?

A. At the factory?

Q. I mean, in front of the factory there.

A. No, sir, I did not.

Q. You never told him anything at all, did you? A. No.

Q. Did he ask Berry anything in your presence?

A. Not that I know of.

Q. You were with Berry? A. Yes, sir.

Q. Did you hear Berry talking to him? A. No, sir.

Q. Did you hear him ask Berry what the trouble was?

A. I can't say that.

Q. What was your idea in going with him?

A. I just merely walked down, and I stepped down and told his mother, because I didn't think he knew.

Q. You thought he didn't know there was any strike?

A. No, sir.

Q. Had he been a member of your Union at that time?

A. No, sir.

Q. What instructions did you get from your Lodge as to how you should picket at this factory, and who gave you the instructions? A. Sir?

Q. Who told you to go up to the Quirk's factory?

A. No one gave me instructions.

Q. Who told you to picket? A. No one.

Q. Did you volunteer? A. Yes, sir.

Q. Who was in the chair at the time you volunteered?

A. I didn't volunteer at the Union; I didn't tell no one I would go.

384a Q. You went there yourself? A. Yes, sir.

Q. You stayed there yourself? A. Yes, sir.

Q. You stayed there three days, you and Morgan, without anyone telling you? A. Yes, sir.

Q. Did you make any report as to the progress?

A. Yes, sir.

Q. You attended meetings of the Union every day; Did anybody ask you how things were going on up there?

A. No, sir.

Q. And you didn't bring them any reports?

A. No, sir.

Q. I understood you to say you were sent there for the purpose of telling the people that there was a strike?

A. I was not sent there.

Q. Did you go there for that purpose?

A. To tell them?
Q. Yes. A. Yes, sir.
Q. Did you tell people who were not members of the Union? A. I told everyone who came out.
Q. You say an old man and woman came out, and you told them, too? A. Yes, sir.
Q. You heard the instructions at the meeting: You were not told to stop every man that came out of the store or—
A. I didn't exactly stop anyone; they stopped themselves.
Q. What did you do?
A. I just merely told them there was a strike there.
Q. You told this old man that there was a strike there?
A. Yes, sir.
Q. You told this woman that there was a strike on?
A. Yes, sir.
Q. Did she come back the next day?
A. I couldn't say.
385 Q. Did you see her the next day? A. No, sir.
Q. How about the old man? A. I never seen him.
Q. Where do you live? A. Sir?
Q. Where do you live? A. 4409 Hunt Avenue.
Q. Have you any real estate? A. No, sir.

The Court: Q. What was it you told the McCommis boy, or his mother in his presence, when you went to visit his father and mother?

A. I just told his mother there was a strike there, and to use her own judgment, and she said she would not let him work.
Q. You didn't tell his mother, in his presence, that he had better stay away from there or somebody would knock his head off?
A. No, sir, I never heard that threat at all.

The Court: The grand jury ought to investigate this case, gentlemen, and find out who is mistaken.

Mr. Holland: Q. Had you ever seen Mrs. McCommis before? A. No, sir.

Q. Or knew her? A. No, sir.
Q. Had you seen his father? A. No.
Q. Who introduced you to them? A. The boy did.
Q. And in introducing you what did he say in the way of introduction?
A. He just said, "Meet my father and mother."
Q. Did you tell them what your business was?

A. Yes, sir.

Q. You had no interest in McCommis, whether he worked there or not; he didn't belong to the Union? A. No, sir.

Q. Why should you go there to them—

386 A. I really didn't [—] that Henry understood it, that is why, and I told his mother.

Q. You had known him only a month, and then not very intimately, is not that true? A. Certainly.

Q. Did you intimate to his mother that there was some danger there? A. No, sir.

Q. But you did say this much, that they could use their own judgment? A. He could.

Q. That he could use his own judgment? A. Yes, sir.

Q. If that is true why did you want the mother to use her judgment?

A. I thought maybe the boy didn't know of the strike.

Q. Did you explain to the mother?

A. No, I didn't explain to the mother; I just told her and she said she would not let him work any more.

Q. Did you tell her that there was any danger of his being harmed? A. No, sir.

Q. You didn't give any reason at all?

A. I only told her there was a strike on.

Q. And you knew at that time that he was not a member of the Union, or bound by any of your rules? A. Yes, sir.

Q. Have you ever seen his father or mother since?

A. No, sir.

Mr. Holland: That is all.

Redirect Examination

By Mr. Leahy:

Q. I want to ask you this question, although I may have asked it before. When you went to that boy's home,

387 that is, Herman McCommis, your companion, Berry, was not with you? A. No, sir.

Mr. Holland: McCommis never testified that he was.

Mr. Leahy: Here is the affidait. I want the original affidavit.

The Court: My impression is that McCommis did testify that this man did accompany him.

Mr. Holland: He said he walked with him to his home, but he didn't go in. This is the man—

The Court: I may have gotten a wrong impression about it from hearing the affidavits, but I don't want this case—

Mr. Holland: He went to his home, but did not go in.

Mr. Leahy: In the affidavit he stated that these two men went to his home and told his mother. In the affidavit he mentions that. The affidavit is short. It says—

The Court: It is not admissible at this juncture at all. I care nothing about it.

Mr. Leahy: Very well.

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388 AMBROSE KUNTZ, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. What is your name? A. Ambrose Kuntz.

Q. What was your business, Mr. Kuntz, on and prior to April 10th of the present year?

A. I was a leatherworker.

Q. Where did you work? A. Stability Leather.

Q. Stability Leather Manufacturing Company, one of the complainants in this case. I believe you left the employment of that Company at the time the rest of the employes quit?

A. Yes, sir.

Q. At that time you were a member of Local Lodge or Union No. 66? A. Yes, sir.

Q. Of the International Union of United Leatherworkers?

A. Yes, sir.

Q. And after the strike was declared did you at any time visit the premises of the Stability Leather Manufacturing Company? A. Visit the premises?

Q. Yes. A. I got my tools out of there.

Q. Sir? A. I got my tools out of there.

Q. You went down to get your toools. Did you ever do any picket duty around there?

A. There was no picket duty to be done down there. There was nobody working as a picket. I was down there maybe once or twice a week.

Q. Did you stay any time when you went down?

389 Q. Did I stay any time?

Q. Yes.

A. For an hour, or an hour and a half.

Q. Did you on any of these occasions use any vile language to any one? A. I did not.

Q. Or call anybody a bad name? A. I did not.

Q. Or attempt to prevent anybody from going to work at that factory? A. I did not.

Q. Or to interfere with anybody that was going in or coming out?

A. I spoke to Manda Berger, that came out of it.

Q. She was a woman? A. She was a woman, yes.

Q. Was she working at the factory?

A. No, sir. She was one of us, the way I thought. We were going down. I was walking across Fourth Street, I and Steve Wilhelms.

Q. At that time what did you say to her?

A. Well, I walked up to her and I says, "Did you get a letter to go back to work?" She says, "No" she Says, "I ain't no scab like Clara Grimm is." She says, "She is in there scabbing. I wouldn't be a dirty scab like that."

Q. Did you ever use that word yourself, to her or to anybody else?

A. I did not. I was informed not to use it.

Q. You say you never used an expression of that kind toward anybody that was in that employment?

A. Absolutely not.

Q. Did you see or hear anybody else do it, use any intimidating langauge? A. I did not.

Q. Did you ever say to Mrs. Berger that she should not disgrace her four children?

A. No, she said to me that she would not be like that.
390 to go and disgrace her children and to be a scab like Clara Grimm; that she had too good a home and did not have to do it.

Q. You say she said it, and you didn't say that language to her? A. She said it.

Q. Who was with you then?

A. Steven Wilhelm and John Bosch.

Q. Was she a member of the Local Union at that time?

A. She was.

Q. Is she a member of it now?

A. She is working at the Stability Leather Goods now. She went to work the next day after telling me she was not a scab.

Cross-Examination

By Mr. Holland:

Q. What day was that she told you she wouldn't scab?

A. It was on a Monday.

Q. You say she did scab?
A. I did not say she scabbed.
Q. What did you say? A. She said she wouldn't scab.
Q. Where did you meet this Mrs. Berger?
A. About a block and a half or two blocks from the shop.
Q. Who was with her at the time? A. Her sister.
Q. This shop that you are talking about is on Fourth and Chouteau? A. On Fourth and Chouteau.
Q. Did you meet them north of there?
A. I met them north of there.
Q. About Cerre Street, around there? A. Yes, sir.
Q. Were they walking along the street?
A. They were walking along the street, and I was walking up one side of the street.
391 Q. Did they take the car? A. No, sir.
Q. They didn't take the car. Did you take the car?
A. No, sir.
Q. You never took the car at all?
A. I never took the car at all.
Q. They didn't get on? A. No car.
Q. How long have you known Amanda Berger?
A. About three months.
Q. How long have you known this little Grimm girl?
A. About seven months.
Q. She belonged to your Union, didn't she? A. She did.
Q. How did Amanda Berger and this little girl happen to be together at that time?
A. They were not together at that time.
Q. Where were they?
A. Amanda Berger and her sister were together.
Q. Where were they coming from, from the Stability?
A. From the Stability Leather Company.
Q. They were working there? A. Not at that time.
Q. What were they doing there?
A. They told me they was in there after a bundle of theirs.
Q. And you say Wilhelm and Bosch were with you?
A. With me at the time.
Q. They were the men that you assigned there to do picketing? A. I didn't assign no men to do picketing.
Q. They were there most of the time?
A. Most of the time, they were there about three days one week. That is all they were there, and that is about all I saw of it, that any fellows were around there at all.
Q. You were in charge of the pickets, weren't you?
392 A. I was in charge of the pickets.
Q. And Amanda Berger and her sister are both working there now, are they not?

A. Well, I don't know whether they are or not.
Q. Who else did you tell not to work there? A. Who?
Q. Did you tell anybody else?
A. I told nobody to stay away and not work there.
Q. Where did you station yourself with reference to the factory?
A. I never was any closer to the shop only across on Broadway and Chouteau.
Q. It is not more than forty feet?
A. Something better than forty feet.
Q. And you and Bosch and Wilhelm stood on that corner?
A. No, sir, we never did stand there three at a time.
Q. You could see everybody that went in there, could you not? A. Nobody went in there to see.
Q. Do you undertake to say now that you never told those people to keep away from there?
A. I never told no people to keep away.
Q. You never told those three women to keep away from there? A. What three women?
Q. That you were just talking about.
A. Amanda Berger?
Q. Yes.
A. I never told her. She said she would not disgrace her three children. I said, "You are right."
Q. She spoke to you first?
A. I spoke to her. I said, "Hello."
Q. Where was that? A. Three blocks from the shop.
Q. Where were you at that time?
393 A. I was out there when she came out of the shop.
Q. Where were you at that time?
A. Broadway and Chouteau. As we go under the Free Bridge to cross that lot, they were on the other side of the street.
Q. You caught up with them, you and Wilhelm and Bosch caught up with those girls three blocks from the factory, and that is how the conversation took place?
A. We walked with her three blocks from the shop.
Q. How long did you continue talking, how far did you go? A. We walked up the street.
Q. How far? A. Market Street.
Q. And you talked to them right along all during that time?
A. They talked to us, in our favor. They didn't talk like they were working there. They talked in favor of us.
Q. Did they promise you not to go back?

A. I didn't ask them to promise. They told me they wouldn't do it, they wouldn't be a scab.

Q. You asked them not to— A. I never did.

Q. Were you not there for that purpose?

A. I didn't go down for that purpose at all. I walked by to see what was there.

Q. You had some purpose in picketing the factory?

A. I didn't go down to picket the place, only passed by to see what was in there, who was working in there. I passed by the place.

Q. To find they were working there?

A. They were not working there at the time.

Q. You followed them as soon as you saw them coming out of the factory?

394 A. I walked up and talked to them because I thought they were one of us.

Q. How far is it from Chouteau Avenue to Market Street?

A. It is about nine blocks.

Q. You know Chouteau is 1100 South?

Mr. Leahy: 900 South.

The Witness: Chouteau is 1000 south.

Mr. Holland: Q. Chouteau is 1000 South?

A. Yes.

Q. And you followed those girls from Chouteau Avenue?

A. I didn't follow them.

Q. You went, anyhow, from Chouteau Avenue to Market Street: Where did they go then after you left them there?

A. They went about their business, home. I don't know where they went.

Q. Where did Wilhelm go? A. Wilhelm went home.

Q. Where did you go?

A. I went to the Grand Opera House.

Q. The next morning you were there again, were you not?

A. No, sir.

Q. When did you come there next?

A. I never went there at all any more.

Q. You went there— A. I went there and went to work.

Q. What? A. I went to work.

Q. That was your last day there, was it?

A. That was the last time I was down.

Q. How many days were you and Wilhelm and Bosch there together? A. Me and Wilhelm and Bosch?

395 Q. Yes.

A. I was there one day when Wilhelm was there, and one day when Bosch was there.

Q. They were the only men helping you, or the only people that called on you, at any time?

A. That came down. There was a couple of men came down for an hour at a time; there was not more than one at a time.

Q. Do you remember their names?

A. Wilhelm and Bosch and Deschant.

Q. Anybody else? A. None that I know of now.

Q. But you do know there were more than that at various times, don't you? A. I didn't see them.

Q. Did I understand you to say that all the men you ever saw there during all that trouble and strike, were yourself and Deschant and Wilhelm and Bosch? A. And Bosch.

Q. Is that every one you saw there?

A. That is all that I saw there.

Q. Did you hear any conversation between Wilhelm and those girls when you followed them at Market Street?

A. I did not. He didn't say any more than I said. They said it all.

Q. They were doing all of the talking?

A. They were doing the talking.

Q. Have you any real estate?

A. I have no real estate.

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396 STEVE WILHELM, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. State your name, please. A. Steve Wilhelm.

Q. Mr. Wilhelm, what was your business on and prior to April 10th of the present year? A. Bag maker.

Q. Where did you work? A. Stability.

Q. Stability Leather Manufacturing Company, one of the complainants in this case? A. Yes, sir.

Q. Did you quit the employment of the Stability Leather Manufacturing Company on or about April 10th, with the rest— A. Yes, sir.

Q. —of the employes who were members of your Local Union. A. Yes, sir.

Q. Were you a member of Local Union No. 66 of the United Leather Workers Union at that time? A. Yes, sir.

Q. And after the strike vote was taken and the strike was declared, did you go down to the premises of the Stability Leather Company?

A. Not until about—it must have been about two weeks after the strike was declared that I went down there.

Q. And at that time did you see Mr. Bosch and Mr. Kuntz?

A. I did at no time see any one down there but myself, with one exception, when Kuntz came down there one time in the afternoon sometime. I couldn't tell you—

Q. How many times were you there prior to the time
398 that you saw Kuntz and Bosch?

A. How many times?

Q. Yes. A. About two times.

Q. Did you stay long around there?

A. Why I stayed about an hour or an hour and a half in the morning, and about that long in the afternoon.

Q. And at that time was there anybody there with you?

A. There was not.

Q. You were alone? A. Yes, sir.

Q. And at all the times that you went down to the Stability Leather Company's premises was there anybody except on this one occasion, was there anybody there except you?

A. No, sir.

Q. Except the one occasion when Bosch was there and this man Kuntz. Now, do you recollect meeting, in conjunction with Bosch and Kuntz, these two women that came out of the factory? A. Yes, sir.

Q. Where did you meet them?

A. We met them about two blocks from the factory, about one and a half or two blocks.

Q. At that time, where were you going?

A. We were coming from the meeting, walking down Chouteau Avenue.

Q. Your meeting place was at Thirteenth and Chouteau?

A. Yes, sir.

Q. And you were coming north?

A. We were walking east on Chouteau Avenue.

Q. And you met them where, did you say?

A. We met them about two blocks away from the factory.

Q. On Chouteau Avenue? A. On Fourth Street.

Q. On Fourth Street? A. Yes, sir.

398 Q. Did you have, either you or Kuntz, or any one of you, have any conversation with these women at that time? A. We did.

Q. Will you kindly tell us just what that conversation was?

A. Well, when we walked down Fourth Street we seen them two women come out of the shop, and we walked under the bridge on Fourth Street and across Fourth Street, and

we came up to them and we says, "Hello, Manda." She says, "Hello." We asked her what she was doing and she said she went into the Stability to get a bundle. We asked her if she was going to work. She says, no, she would not go back to be a scab like Clara Grimm. We did not know that Clara Grimm was working. She told us she would not disgrace her four children by being a scab, as Clara Grimm was.

Q. What was this other name—

A. I never did know her name, until I heard it this afternoon; Berger, I believe.

Q. Was she a member of your Local Union at that time, this girl, Amanda Berger? A. Yes, sir.

Q. And that was why you spoke to her, was it? A. Sir?

Q. I say, that was why you spoke to her? A. Yes, sir.

Q. Now, you said that she told you that she didn't want to scab, and wouldn't be like this Grimm girl, did she?

A. She did.

Q. Did you ever use that term to her in any way?

A. I did not.

Q. Did you hear Kuntz or Bosch do it? A. I did not.

Q. Was that statement made by her, and by her alone, then? A. About this Miss Grimm?

Q. Yes. A. Yes, sir.

Q. This man Bosch, where does he reside?

399 A. Why, he lives out somewhere on Ferry Road.

Q. He is not in the City, so far as you know now, is he? A. No.

Q. And you don't know where he is. But Kuntz was with you in addition to him, at that time, and you say no conversation of the character that she had detailed occurred between you, that is to say, that you did not use that language to her?

A. No, sir.

Q. You didn't call her a scab? A. No, sir.

Q. Did you at that time get on the car with her?

A. No, sir, we walked.

Q. At Fourth or Market Streets?

A. We walked all the way up to Market Street.

Q. Did you get on the car with her at any time?

A. I did not know whether she took a car or not.

Q. You didn't accompany her?

A. She was about to walk away, and she called me over to her and she told me if I ever meet this Miss Clara Grimm, not to tell Miss Grimm that she was scabbing at the Stability.

Q. Did you ever have a conversation with her on the street car? A. I never went on the car.

Q. Did you see Clara Grimm then?

A. No, not right then, but later in the afternoon.
Q. Where did you see her?
A. I see Clara Grimm on the street car.
Q. You saw Clara Grimm on the street car?
A. Yes, sir.
Q. What car was that?
A. Fourth Street car, going north.
400 Q. Did you have any conversation with Clara Grimm at that time? A. I did.
Q. What was it?
A. I went up to her and I says, "Hello." She says, "Hello." I asked her where she was coming from. She says, "From the factory." I asked her what she was doing up there. She says, "Working." I says, "Is the strike over?" She says she thought it was. Then I thought I would put her right. I thought she was on the wrong track. I told her, "Well, if the strike is over I would like to go back to work myself. If it is over I am going up to our office and find out." I asked her if there was anybody else working there and she says, "No one," and then I says—
Q. Did you ask her to go up to Mr. Birkenmeier's office, the business agent?
A. I did, after I was done speaking with her. I told her that I didn't think, that she couldn't tell me that the strike was over—there was nobody else working up there at the time she was working, that has worked before, so I told her to go up to our office and get some information. I thought that she was wrong and didn't really know what she was doing.
Q. At that time was she a member of your Local Union?
A. Yes, sir.
Q. And you knew that she was a member?
A. Yes, sir.
Q. You told her to go up to see Birkenmeier, the business agent, in order to— A. To right herself.
Q. To right herself on this question whether the strike was settled? A. Yes, sir.
Q. That was all the conversation you had?
A. Yes, sir.
401 Q. During the time you were on duty, or were around in the vicinity of this factory, did you use any threatening or menacing language to any person coming out or going into the factory?
A. I couldn't. There was no one coming out and no one going in.
Q. Did you attempt to interfere with anybody?

A. There was no chance. There was no one coming out, no one working there.

Q. Did you ever use violence of any kind? A. No, sir.

Q. Did you see anybody else do it? A. No, sir.

Cross-Examination

By Mr. Holland:

Q. You said there was nobody going to work around there? A. There was none.

Q. So it was not necessary to tell anybody anything, was it? A. No, sir.

Q. But did you stay there?

A. Yes, to see if there would anybody go there.

Q. Who stayed with you?

A. There was nobody there but myself.

Q. At any time? A. At any time.

Q. Were you ever there when Kuntz was there?

A. Just for a little while one afternoon.

Q. And when Bosch was there?

A. Bosch happened to come that afternoon.

Q. And what is this other man's name, Deschant?

A. I never seen him.

Q. You never saw Deschant. When you talk about
401 taking the street car, do you mean you took the street car with this little girl, on the same day that the other girls were followed, or some other day?

A. On the same day.

Q. Where do you live? A. 1020 Marion Street.

Q. That is south, is it not? A. Yes, sir.

Q. What was the necessity for your taking a car coming north?

A. I did not take any car coming north—Oh, yes, I did.

Q. Did you not just state so, that you took the car?

A. Going north.

Q. It was going north, was it not? A. Yes, sir.

Q. That car goes north as far as Pine and you rode up to go that far?

A. I believe it was Broadway where she got off.

Q. Broadway and Pine? A. I believe it was.

Q. Where did you go after that?

A. I went down to our office.

Q. Where is your office? A. 1007 Chestnut Street.

Q. You went to 1007 Chestnut Street? A. Yes, sir.

Q. In order to get it right, if I understand you rightly, you said you came from the meeting at Thirteenth and Chouteau Avenue and walked east on Chouteau? A. Yes, sir.

Q. What was your purpose to come down to Broadway; why did you not come north on the Twelfth Street bridge—

A. I wanted to see if there was anybody working.

Q. And you discovered this little girl on her way home?

A. I seen her.

Q. And then you took the car?

A. I didn't know she was working there until Mrs. Berger told me.

402 Q. When did Mrs. Berger tell you?

A. That afternoon, before I met this girl.

Q. Earlier in the day? A. Earlier in the day.

Q. And then you made it a point to see this little girl when she was coming out, to talk to her; was that the object?

A. Yes.

Q. And when she took the car you took the car?

A. Yes, sir.

Q. Where was Mrs. Berger when you were about two blocks—

A. We were about two blocks south. We were coming down Chouteau Avenue when they were coming out of the place.

Q. So you were on Fourth and Cerre, north of Chouteau Avenue, were you? A. Yes, sir.

Q. You saw them come out and followed them to Fourth and— A. We walked up to them.

Q. And you caught up with them? A. Yes, sir.

Q. And you walked along until you got to Market Street? A. They walked along with us.

Q. But they had two or three blocks—

A. We didn't figure that was because they were members of the Union.

Q. But you were at Seventh and Chouteau Avenue when you saw those people leave thefactory at Fourth Street?

A. We were on Chouteau Avenue.

Q. You were on Chouteau Avenue when you saw them leaving the factory at Fourth Street? A. Yes, sir.

Q. Who suggested that you follow them?

A. Nobody suggested it. We just walked right over.

403 Q. Why did you not take Broadway? You went out of your way?

A. We didn't take Broadway, we crossed Broadway.

Q. You went a block east and came north on Fourth Street, although you had to come to 1007 Chestnut Street, did you not? A. We went a block east.

Q. You went down Fourth Street. Broadway is 500, is it not?

A. We crossed Broadway and walked north on Fourth Street.

Q. Although your destination was west, you were going east— A. We were going north.

Q. Have you any property? A. No, sir.

Redirect Examination

By Mr. Leahy:

Q. At the point where you got in on Broadway, Fourth Street and Broadway come in together there, do they not; they join together at Chouteau Avenue?

A. Well, they do right there, yes.

Q. So that you really were on Fourth Street. Where is that factory located?

A. It is on the northeast corner of Fourth and Chouteau.

Q. That was right there in front of you? A. Yes, sir.

Q. As you stood there on that occasion? A. Yes, sir.

Q. You were right on Fourth Street and on Broadway, and you went the way that you intended to go, did you?

A. Yes, sir.

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404 NORA WIELENDY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. State your name. A. Nora Wielandy.

Q. You are a member of Local Union No. 66 of the International Leatherworkers? A. Yes, sir.

Q. And were on and prior to the 10th of April of the present year? A. Yes, sir.

Q. Where did you work?

A. Herkert & Meisel, Fifteenth and Pine.

Q. You were a member of the Local Union at that time?

A. Yes, sir.

Q. You quit with the rest of the employes who were members of the Local when the strike was declared?

A. Yes, sir.

Q. Did you go back to that place at any time?

A. No, sir.

Q. Did you ever do picket duty around there?

A. No, sir.

Q. Did you ever accost anybody coming out or going in?

A. No, sir.

Q. Or tell anybody that they should not work there?

A. No, sir.

Q. When you left there and quit that employment that was the end of your connection? A. Yes, sir.

Q. Did you ever see any violence of any kind carried on? A. No, sir.

405 Q. Or anybody intimidated? A. No, sir.

Cross-Examination

By Mr. Holland:

Q. At which factory did you work, Miss Wielandy?

A. Fifteenth and Pine.

Q. Fifteenth and Pine? A. Yes, sir.

Q. How long did you work there?

A. About three years.

Q. About three years? A. Yes, sir.

Q. You know the superintendent about there, I suppose?

A. Mr. Webber, yes.

Q. You also know Mr. Mees down at the other number?

The Court: That was covered.

By Mr. Holland:

Q. Did you quit there on the 10th of April?

A. Yes, sir.

Q. How many girls were working there at the time, that quit with you? A. Five of them.

Q. Did you attend the meetings at Chouteau Avenue?

A. Yes, sir.

Q. Did you ever volunteer for picket duty? A. No, sir.

Q. Do you know whether any of the girls did or not?

A. No, sir.

Q. Have you ever been down to the factory since you quit?

A. One day I was at the meeting. I believe it was on Thursday, and I wanted to get my voucher cashed, and Mr. Birkenmeier said I had to go to the office at 1007 Chestnut, so I went down. As I went down to the Twelfth Street

406 bridge I had to pass Twelfth and Chestnut, and just as I did Mr. Mees and Mr. Webber were coming. Mr. Mees got on the Bellefontaine car going north, and Mr. Webber walked with me.

Q. That was the only time you were there?

A. Yes, sir.

Q. Do you know any other ladies that were out on strike with you? A. I know—

Q. I say, do you know any ladies that quit at the time you did? A. Yes, sir.

Q. Who were they? A. Helen Miller.
Q. Anybody else? A. Margaret D.
Q. Anybody else?
A. All the girls went out that was up there.
Q. They didn't come around the factory, though?
A. No, sir, I never seen them. I was never up there.
Q. Have you ever seen any women around there?
A. No, sir.
Q. Do you know whether any were there or not?
A. No, sir.
Q. You don't know whether any were there or not, do you
A. No, sir, I don't.

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407 ESTHER BRADLEY, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:
Q. State your name, please. A. Esther Bradley.
Q. Miss Bradley, you are not a married lady, are you?
A. No, sir.
Q. How do you spell your name? A. B-r-a-d-l-e-y.
Q. Where were you employed on and previous to the 10th of April of the present year? A. Herkert & Meisel.
Q. What were you doing?
A. Operating a sewing machine.
Q. At that time were you a member of Local Union No. 66 of the Leatherworkers Union? A. Yes, sir.
Q. And you still are a member of that Union, are you?
A. Yes, sir.
Q. I believe you left on that occasion, that is, on or about the 10th of April, with the rest of the employes that were members of the Union, that is, at the time the strike was declared? A. Yes, sir.
Q. Did you ever go back to the vicinity of these premises?
A. Yes, sir.
Q. Was anybody with you?
A. Well, there was one gentleman with me, that was all.
Q. Who was he? A. Philip Deering is his name.
408 Q. Did you ever observe anybody else, outside of this man and yourself, doing picket duty around there?
A. There was one gentleman outside.

Q. How frequently were you there?
A. I was there two times. That is all.
Q. Was that the— A. Only time.
Q. The only time you were ever there?
A. Yes, sir.
Q. At that time did you accost anybody going to or from the factory?
A. There was a little girl, and I said, "You know this place is on a strike?" She said, "Yes, I am going for my apron now." I said, "Don't go in there, the place is on a strike," and she says, "I won't. I am going home."
Q. Did you yourself try to intimidate anybody from going in that place?
A. No, sir; that is the only one I spoke to.
Q. Going in or going out? A. No, sir.
Q. Did you see anybody else do it? A. No, sir.
Q. Did you see any violence of any kind?
A. No, sir.
Q. Or hear any threats made? A. No, sir.

Cross-Examination

By Mr. Holland:
Q. You were never there, Miss Bradley, over two hours during the entire strike? A. Yes, sir.
Q. During the entire strike of several weeks?
A. During the entire strike, two times.
Q. You had pretty good success with that one girl?
A. But she had intended quitting, anyway. She was going for her apron when I saw her.
409 Q. Did you attend the meetings on Chouteau Avenue at any time? A. Yes, sir.
Q. Do you know whether any lady pickets were ordered to that corner at Thirteenth and Chestnut?
A. No, sir. I volunteered.
Q. Did anybody else volunteer? A. Miss Wielandy.
Q. Did she picket there, too?
A. She must have been there previous to me.
Q. What were her hours?
A. I don't know. I went two times. I volunteered and went down the next morning.
Q. Was that the only one that you turned away from there?
A. Yes; that is the only one I spoke to.
Q. Do you know anybody else that was turned away, by Miss Wielandy or anybody else? A. No.
Q. You never were there when there was any large amount of picketing going on, were you? A. No, sir.

410 HERMAN DIECKHORNER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. State your name, please. A. Herman Dieckhorner.

Q. What was your business on and prior to April 10th of this present year?

A. I was working at Herkel & Meisel, Fifteenth and Pine.

Q. At what place? A. Fifteenth and Pine.

Q. You were a member of Local Union of the Leatherworkers at that time? A. Yes, sir.

Q. And did you quit at the same time as the rest of the employes? A. Yes, sir.

Q. Did you volunteer for picket duty?

A. No, sir.

Q. Were you around that place at any time after the strike? A. I passed by there.

Q. About what time was that?

A. About quarter after four, or five o'clock.

Q. What day, do you recall?

A. Well, I couldn't recall the date.

Q. How long after the strike?

A. I guess about two weeks after the strike.

Q. Did you at that time see Mr. Mees?

A. I saw Mr. Mees.

Q. What position does he hold with that Company?

A. He polishes suit cases.

411 Q. Did you have any talk with him?

A. No, sir. All he done was wave his hand at me and ask if I didn't want to go back.

Q. Did you have any conversation with Mees at this time?

A. With Mr. Mees?

Q. Yes.

A. No, sir. Only he asked me if I wanted to go back to work. I told him when the rest of them went back.

Q. Did you say to Mees at that time, or any other time, that there was a man working in the factory, and that you would like to get your hands on him? A. No, sir.

Q. Did you ever use that language? A. No, sir.

Q. Did you ever intimidate anybody? A. No, sir.

Q. Or try to intimidate anybody that was going in or coming out of that factory? A. No, sir.

Q. Or to interfere with any of the employes who had taken your places? A. No, sir.

Q. Did you ever see anybody else do anything like that?
A. No, sir.

Cross-Examination

By Mr. Holland:
Q. Who was with you at the time, Mr. Dieckhorner?
A. Nobody.
Q. What? A. Nobody.
Q. You had no intention of going back there, did you?
A. No, sir; I was just walking around Pine Street.
Q. What for?
A. I was not going there. I was walking down Pine Street, just when I went down town.
Q. From where?
A. From the house, my home.
412 Q. Where do you live? A. 2536 North Market.
Q. That is way up this way, in north St. Louis?
A. Yes.
Q. And you took that method of coming—
A. Coming down.
Q. You didn't see anybody there but yourself?
A. Yes, sir.
Q. You didn't even see Mr. Mees?
A. I never noticed him. He hollered at me.
Q. You had no conversation at all with him?
A. He asked me when I was coming back. I said, "When the rest of them come."
Q. But you were talking to him? A. Yes, sir.
Q. That was the only time you were around that factory?
A. Yes, that was the only time I was around that factory.
Q. Have you attended the meetings on Chouteau Avenue?
A. Several times.
Q. Did you ever volunteer to be a picket? A. No.
Q. Do you know what directions were given to the pickets?
A. No.
Q. You were never there when any instructions were given? A. No, sir.
Q. How many meetings did you attend?
A. Four or five, I think.
Q. During those four or five meetings there was never any instructions isssued to the pickets?
A. No, sir.
Q. Not a word? A. No.
Q. Who was in the chair at those four or five meetings?
A. Mr. Reuter.
Q. The gentleman sitting here?

A. Yes, sir.

413 Q. And he never told anybody how to conduct himself or herself, did he?

A. Not that I know of.

Q. Have you any property, Mr. Dieckhorner?

A. No, sir.

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414 THOMAS HALLIBURTON, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. State your name, please.

A. Thomas Halliburton.

Q. What was your business on and prior to April 10th of the present year? A. Why, machine operator at Herkert & Meisel's Trunk Company.

Q. And you were at that time a member of the Local Union? A. Yes, sir.

Q. No. 66 of the Leatherworkers International?

A. Yes, sir.

Q. You left the employment of the Herkert & Meisel Trunk Company on the same day as the rest of the employes who were members of the Local? A. Yes, sir.

Q. Now, subsequent to the 10th of April, and after the strike was declared, did you go to the vicinity of Herkert & Meisel? A. Yes, sir.

Q. Where was that?

A. At Thirteenth and Chestnut.

Q. How long after the strike was declared did you go there?

A. Why, I was there about a half dozen days, I guess; about six days altogether.

Q. That was after the strike was declared?

A. Yes, sir.

Q. How many were there with you?

A. Well, there never at any time was more—I believe one time going home from the meeting of leatherwork-

415 ers, going home over Twelfth Street, there was six of us there at one time.

Q. That was the only occasion that six of you were there when you were passing along at that street?

A. Yes, sir.

Q. Coming from the meeting at Thirteenth and Chouteau?

A. Yes, sir.

Q. On any other occasion outside of that, how many were there?

A. Well, one time I know there was only two of us, and in fact, the superintendent of the factory remarked, he says, "What is the matter; is there only two of you doing duty?" I says, "Well, we don't need any more."

Q. On any of these occasions that you attended in the vicinity of the factory of Herkert & Meisel Trunk Company did you try to stop anybody that was going in or coming out of that factory?

A. On one occasion there was two fellows that came by there, and I asked them if they were going to work in there, and they says, "no." I told them that there was a strike on there and they says, "Well, if that is the case we wouldn't work in there, anyway."

Q. Otside of that occasion did you talk to anybody else?

A. No, sir.

Q. Did you use any threats or intimidations?

A. No, sir.

Q. Towards any one of the employes that had taken your place, or the places of the rest of the strikers, in going in or coming out of the factory? A. No, sir.

Q. Or call anybody bad names, "scab" or anything
416 else? A. No, sir; I wouldn't do that.

Q. Did you see anybody else do that?

A. No, sir.

Q. Or anybody that was picketing?

A. No, sir. I made it my business on each and every occasion when I was there amongst the [the] men to tell them not to use any vile names, or use any names of any kind.

Q. Then you contented yourself with merely telling this party—or anybody that asked you, that there was a strike on? A. That is all.

Q. And you say you never observed any violence?

A. No, sir.

Q. Of any kind? A. No, sir.

Q. Or heard of any interference with anybody coming in or going out? A. No, sir.

Q. Did anybody complain to you, or did anybody report to you that they had been interfered with? A. No, sir.

Q. Did you ever, since the strike, talk to any of the officials of the Herkert & Meisel Trunk Company? A. No, sir.

Q. Did you see any of the officials down there?

A. I seen them, yes, sir.

Q. Did any of them complain to you that you had been interfering with their men?

A. No, sir. On one occasion a policeman came to us—that was, I believe, the second morning we were out. We stopped there for a few minutes talking to one of the foremen, going in and out. We were all on good terms. About that time Mr. Meisel got out of his automobile, and he
417 was talking to the policeman, and the policeman came over and told us, "Boys, you will have to keep moving. Don't stand on the street. You will have to keep moving." From that time on we made it our business to keep moving. We didn't stop.

Cross Examination

By Mr. Holland:

Q. Mr. Halliburton, you were not in charge of the pickets there, were you? A. I volunteered.

Q. Was not Mr. Malley Colley the man in charge of the pickets?

A. He was prior to the time I was there. When he went to work I took his place.

Q. Could you give us the name of any man wou told to keeep still and not to break the law?

A. I don't know that I could call their names, but here is two of the men sitting inside here.

Q. These two front men here? A. Yes, sir.

Q. Were they pickets? A. Yes, sir.

Q. Did you tell them not to do anything the law would not permit?

A. I did tell them not to do anything the law would not permit, not to use violence.

Q. You had been sent there by your Local to tell union men that there was a strike on? A. That is all.

Q. You knew at the same time that there were no union men working there? A. Yes, sir.

Q. Whom did you expect to tell, if there were no union men forking in there? A. (No answer).

Q. I asked you about the purpose of coming there
417a when there were none of your members there.

A. I say that my intention was to notify anybody that was going in there; if there should happen to be a member of the organization they wouldn't like to go into a place of that kind and work.

Q. Did you ever during your time of picketing there ask any man whether he was going in or not?

A. No, sir, not before he went in. As I stated, there was two men came out and I asked them if they were going to work in there, and they said no, they were not.

Q. Did you ask those two men if they belonged to organized labor? A. No, sir.

Q. You did not?

A. No, I simply told them there was a strike on there.

Q. So you were not confining your operations to the members of the Federation altogether, were you?

A. Well, no—not to that extent.

Q. Any one that was coming by there, or going in there, if you got a chance you would inform him in a gentle and nice manner that he should not do that?

A. I did not inform him that he should not do that, but simply told him that there was a strike on in there.

Q. That was what you were there for, for that purpose. Now, what is the largest number of men that you ever had under your control at Herkert & Meisel since the strike has been inaugurated?

A. The largest number that we had there was six.

Q. The largest number was six? A. Yes, sir.

Q. Where did you place those men?

A. Not any particular place. We walked up and
418 down, took the trip the full block.

Q. Could you tell me, in addition to those six there, were there any Union men in the neighborhood?

A. I have seen four or five men stop at the corner in passing up Twelfth Street, that would stop there.

Q. They stopped there so that at the time of day Mr. Meisel, as you say, got out of his automobile, a policeman was there and you had a good many men there in that crowd?

A. Six on duty that morning.

Q. Where were the others?

A. Walking up and down.

Q. On the corner, were they?

A. No, sir. Six of us was walking the block from one end to the other.

Q. Did you not see as high as ten men around there? I mean all around the block.

A. Well, I don't know. I didn't walk around.

Q. You were walking on Chestnut Street? I mean within view of you. A. Yes, sir.

Q. Who was taking care of Thirteenth Street?

A. I don't know if there was anybody on Thirteenth Street side. I had no occasion to walk on the Thirteenth Street side.

Q. Why? A. The men did not come in that side.

Q. You stayed around the entrance? A. No, sir.

Q. Where?

A. I walked from Thirteenth Street to Twelfth Street and back.

Q. That is where the entrance is, is it not?

A. Yes, sir.

Q. And the six of you walked there?

A. Yes, sir.

419 Q. Were you on duty there with Malley Colley?

A. I believe on one morning, I believe we were together.

Q. Which one of you was in charge? A. He was.

Q. You were working, then, under him, were you?

A. Yes, sir. We were working there together.

Q. When did you get charge of the picket line?

A. I think it was about a week or two weeks after the strike was called.

Q. Had you ever at any time seen any girl stopped or intercepted on her way into the factory, or coming out from the factory? A. No, sir.

Q. You never had occasion to warn anybody not to go in there?

A. No, sir—I beg your pardon. On one occasion there was a man came down. I happened to be on the corner of Twelfth Street. There was his daughter, I suppose, or a lady. He had a dinner bucket on his arm. He asked me, "Is there a strike on in that place down there?"

Q. You never asked that man if he belonged to organiked labor, did you? A. No.

Q. Where did he go?

A. Went to his work, I suppose, wherever he was working.

Q. The young lady, the girl, was she —

A. The girl looked to be about sixteen years old.

Q. Why did you not let the lady pickets handle this girl?

A. I didn't say anything to the girl.

Q. Why did you not let the lady pickets handle the girl?

A. The ladies didn't seem to be inclined to go on
420 picket duty; they didn't seem to care to volunteer, and they didn't go.

Q. Do you mean to say that during your time there, there was never a lady around there that belonged to the Union?

A. There was one lady, the one that testified here. I seen her one afternoon.

Q. One afternoon? A. One evening.

Q. Did you ever see any other lady there? A. No, sir.

Q. So far as the ladies were concerned, you attended to them as well as the men?

A. I said nothing to the ladies whatever.

Q. Who else did you stop? A. That is all.

Q. How many men did you stop there going into that factory? A. Two.

Q. How many turned back?

A. They didn't turn back, as I stated a while ago. They came by there and I asked them if they were going to work there.

Q. So long—so, there was nobody applying for work there at all, was there?

A. Those two applied for work and they were turned down.

Q. But so long as they kept six men there nobody applied for work?

A. After we found out there was nobody applying for work, or they was not putting on any, we went by.

Q. You were prepared to tell them to go away, if they came to apply?

A. Not to tell them to go away, but to tell them there was a strike on.

Q. That was the effect of it?

A. My intention was to let the people know there was
421 a strike on in there, and if they wanted to work there that was their privilege.

Q. But you took the precaution to warn them?

A. You can never find out if a man belong to organized labor unless you ask him.

Q. You didn't go to that trouble, did you? A. No.

Q. Had you ever been a picket in any other strike?

A. In the Harness & Saddlery works, yes, one time in 1900.

Q. So you were apprised in that particular, were you—

A. No, sir, not—

The Court: Let us not try that case, Mr. Holland. It is too old.

By Mr. Holland:

Q. Did you get any instructions from Mr. Reuter?

A. No, sir.

Q. You never did? A. No.

Q. You were at the meeting when you voluntered?

A. Yes, sir.

Q. He never told you how you should conduct yourself?

A. No, sir, only to this extent, that we were at all times advised to keep away from violence or threats of any kind.

Q. Who advised you along those lines?

A. Well, the chairman of the Executive Board.
Q. What is his name?
A. His name is Ehlenbeck, Mr. Kaysing and Mr. Reuter, and our business agent, Mr. Birkenmeier, and also our vice-president was Mr. Schilling.
Q. At every meeting? A. Yes, sir.
Q. Did Mr. Schilling make a speech to tell you that?
A. In all of his practice in the organization he ad-
422 vised to keep away from violence.
Q. Do you know where he is now?
A. In Chicago, sick, I believe, in a hospital.
Q. Have you any real estate, Mr. Halliburton?
A. No, sir.

Redirect Examination

By Mr. Leahy:
Q. You mentioned that at one time, on one occasion, there were six men with you on the picket line? A. Yes, sir.
Q. And was that the time that you said they were coming from the hall? A. Coming from the hall one evening.
Q. At Chouteau Avenue, from the meeting, and passing by there? A. Yes, sir.
Q. And they walked past the factory at that time?
A. Yes, sir.
Q. Did they go about their business?
A. They went about their business, yes, sir.
Q. Then these other cases you referred to, one or two, or possibly three around the factory? A. Yes, sir.
Q. And I believe you stated nobody was interfered with. That is all.

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423 WALTER WEBBER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of defendants as follows:

Direct Examination

By Mr. Leahy:
Q. What is your name? A. Walter Webber.
Q. Where were you working? A. Herkert & Meisel.
Q. In the present year, prior to April 10th, you were working there? A. Yes, sir.
Q. You went out on strike? A. Yes, sir.
Q. You were a member of the Local Union of Leatherworkers at that time? A. Yes, sir.
Q. You were with this man that testified here, the last witness, up around that factory? I say, were you around that factory of Herkert & Meisel after that strike?

A. Yes, sir.
Q. On one or two occasions?
A. Two days, three days, possibly.
Q. During that time did you notice any violence or intimidation or threats against any person, or did you yourself make any? A. No, sir.
Q. Or prevent any person from going in or coming out of that factory? A. No, sir.
Q. Did you get anybody else to do it? A. No, sir.

Cross-Examination

By Mr. Holland:
Q. You say you were picketing with Mr. Halliburton?
A. Yes, sir.
424 Q. How many of you were on the picket line?
A. Four of us, and one time there was six.
Q. One time there were six? A. Yes, sir.
Q. Have any of your friends called around to see you from other factories, at any time? A. No.
Q. Do you state that the largest number of men you ever saw around that factory was six?
A. Well, that was on picket duty, six.
Q. How many altogether?
A. There was quite a number of men standing around there that I didn't know.
Q. How many men were standing around beside the pickets?
A. On Twelfth Street there was a couple of men standing there and talked, but I can't say where they belonged to, or what they had to say.
Q. That was just one day?
A. That was one day.
Q. Now, all the other days, what was the largest or greatest number of men that you saw around there when you were picketing that place? A. Five, six and seven.
Q. Have you ever seen as high as twenty-five?
A. No, sir.
Q. Have you ever seen any women picketing there?
A. No, sir.
Q. Or girls? A. No.
Q. You never have? A. No, sir.
Q. How many days did you picket there?
A. Altogether I was there three times. It was the 23rd of April and the 24th of April, and I was—I was passed there the 1st day of May, but didn't do any picketing then.
425 Q. You were there only a short time each day?
A. Yes, sir.

Q. So you don't know what went on in your absence, do you? A. No, sir.

Q. And the highest number of men you have seen there was ten?

A. No, sir. I told you the highest number I saw there was seven that I knew.

Q. But you say there were some there that you didn't know? A. Yes, sir.

Mr. Holland: That is all.

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426 ANNIE STECKER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. What is your name? A. Annie Stecker.

Q. Where did you work on and prior to the 10th of April of the present year? A. For Herkert & Meisel.

Q. For the Herkert & Meisel Trunk Company?

A. Yes, sir.

Q. Were you one of the leatherworkers that left down there, that left the employment of the Company?

A. I am a trunk—

Q. You quit the employment of that Company at that time, did you? A. Yes, sir.

Q. You were a member of the Local Union of Leatherworkers at that time, also? A. Yes, sir.

Q. And you are one of the defendants in this case, are you? A. Yes, sir.

Q. You have been served with a copy of this injunction or restraining order? A. Yes, sir.

Q. Now, since the strike have you intimidated anybody?

A. No, sir.

Q. Or used any bad language to anybody?

A. No, sir.

Q. Have you tried to prevent anybody from working for Herkert & Meisel Company? A. No, sir.

Q. Or any one of the complainants here? A. No, sir.

Q. Have you entered into any sort of a conspiracy with anybody to try to injure them in their business?

A. No, sir.

427 Q. Or prevent them securing employes in any place?

A. No, sir.

Q. Have you ever done any picket duty? A. No, sir.

Q. Have you been there since? A. I have been around there. I passed there from the hall one evening, and there was no one coming out of there.

Q. You say you passed from the hall? A. Yes, sir.

Q. Where was the hall? A. At Thirteenth and Chouteau.

Q. And when you were coming from Thirteenth and Chouteau you say you passed by Herkert & Meisel's?

A. Yes. There was no one coming out.

Q. Did you stop or loiter there? A. No, sir.

Q. You went on about your business and talked to nobody?

A. No, sir.

Q. You didn't see anyone else intimidated, did you?

A. No, sir.

Q. Or see any one of your members talking to any person coming in or going out of that plant? A. No, sir.

Cross Examination

By Mr. Holland:

Q. Did you go out on the 10th, Miss Stecker?

A. Yes, sir.

Q. And you haven't gone back since, have you?

A. No, sir.

Q. What have you been doing since?

A. I haven't been doing anything.

Q. Do you attend the meetings regularly? A. Yes, sir.

Q. How often?

A. I go there two or three times a week.

Q. You go there two or three times a week?

A. Yes, sir.

428 Q. Do you occasionally get around Thirteenth and Chestnut?

A. I passed there one evening from the hall, and there was no one coming out of there.

Q. What was your purpose in going there, Miss Stecker?

A. I was going home.

Q. Where do you live? A. Fourteenth and Clinton.

Q. So you walked up from Thirteenth and Chouteau to Thirteenth and Chestnut? A. Yes, sir.

Q. Over the Twelfth Street bridge? A. Yes, sir.

Q. You didn't continue—you went past the factory?

A. I passed that way because that was the shortest way.

Q. Did you meet anybody at all that you knew?

A. There was nobody that I knew, only the foreman, Mr. Sherman.

Q. It was after business hours, was it?

A. Yes, it was after business hours.

Q. Were you at the meeting at the time this strike was called? A. Yes, sir.
Q. And voted? A. Yes, sir.
Q. How many were at that meeting?
A. I couldn't say. I didn't count them to see how many was there.
Q. Was anything said about pickets at the meeting?
A. At the time of the strike there was not.
Q. After that, the next meeting, when did they talk about putting on the pickets? A. About three weeks afterwards.
Q. Two weeks afterwards? A. Three weeks.
Q. Who spoke about putting on the pickets?
429 A. Well, I don't know. I couldn't say who spoke about it.
Q. Was Mr. Reuter in the chair? A. Yes, sir.
Q. What did he say?
A. Well, I don't know what he said about appointing pickets.
Q. Were you there when they called for volunteers to picket? A. Yes, sir.
Q. How many people volunteered to picket?
A. Well, I don't know; I didn't count them.
Q. Well, about how many—ten, fifteen, twenty, thirty or forty? You can tell; you were there in the meeting.
A. I couldn't say, because I didn't turn around and count them.
Q. You didn't volunteer, did you? A. No, sir.

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430 WALTER DESCHANT, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:
Q. State your name, please. A. Walter Deschant.
Q. Mr. Deschant, where were you working on the 10th of April of the present year?
A. At the Stability Leather Goods Manufacturing Company.
Q. Who?
A. The Stability Leather Goods Manufacturing Company.
Q. That is one of the complainants in this case?
A. Yes, sir.
Q. Were you a member of the Local? A. I was.
Q. Of Local Union No. 66 of the Leather Workers International at that time? A. I was.

Q. And you left the employment of the Stability Company at the same time with the rest of the employes who were members of the Local Union, did you? A. I did.

Q. Now, subsequent to that and after the strike was called, did you at any time go down to the premises of the Stability Company, were you in the vicinity of their premises?

A. I was.

Q. Was any one with you? A. Why, one time.

Q. One time? A. One time.

Q. How many were there at that time?

A. Just one, that is, two, including myself.

Q. Did you at that time try to prevent anybody from going in there, or coming out of the factory? A. I did not.

Q. Or to interfere with anyone? A. I did not.

431 Q. Did you intimidate anybody? A. No, sir.

Q. Did you use bad language to anybody?

A. No, sir.

Q. Or make any threats? A. No, sir.

Q. Did anybody else do it? A. No, sir.

Q. I believe you are a defendant in this case, you were served with a copy of the paper, this order. Did you enter into any conspiracy with anybody to injure the business of the complainants? A. I did not.

Q. Or ever try to? A. No, sir.

Cross Examination

By Mr. Holland:

Q. Did you volunteer to do picket duty, Mr. Deschant?

A. Sir?

Q. Were you around at the time they volunteered to do picket duty, were you one of the men that volunteered to do picket duty? A. Yes, sir.

Q. When did you volunteer?

A. I don't know the exact date.

Q. How? A. I don't know the exact date.

Q. Where were you picketing? A. Stability Leather Goods.

Q. Who was assigned there with you?

A. Why, I was assigned by myself, by the captain.

Q. Who was the captain? A. Mr. Kuntz.

Q. The captain was there most of the time, wasn't he?

A. Well, I do not know.

Q. He was there when you were there, was he not?

A. I was there when—

Q. Have you ever seen Wilhelm there?

A. No, sir, I did not.

432 Q. Have you ever seen Bosch over there?

A. No, sir, I did not.

Q. How many days did you picket down there?

A. I don't just remember.

Q. Did you get any instructions from your office or labor local as to how you were to carry out that picketing?

A. Why, the only instructions I received was not to molest anyone, or speak to anyone; if I seen anyone going in there just notify the captain. That was all the instructions.

Q. Then you were not to talk to anybody at all; was that the instruction, that you must not talk to anybody at all, tell them there was a strike on, or anything?

A. I never received no instructions of that kind.

Q. They told you not to commit any harm, was that it, but they didn't tell you what to do, did they, tell the people not to go in, or tell them there was a strike on there?

A. I was not warned in that way at all, no, sir.

Q. Did you ever tell anybody at all that there was a strike?

A. I did not. There was no one going in.

Q. You knew that at that time, that there were no members of your Union working there?

A. I didn't see anyone go in. I couldn't tell whether there was any working there or not.

Q. But you took your position up there close to the factory, did you not? A. Yes, sir.

Q. Both you and Mr.—what is the captain's name?

A. No, not both. I was there at times. I was taken down and Kuntz left and I stayed part time.

433 Q. And then Mr. Kuntz relieved you again?

A. No, the next time I was down.

Q. Who relieved you that evening?

A. No one relieved me.

Redirect Examination

By Mr. Leahy:

Q. You say nobody went in or came out of that factory while you were there?

A. Nobody went in or came out of that factory while I was there.

Q. So consequently you could not have interfered with any person.

434 ROBERT GINNER, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. State your name, please. A. Robert Ginner.

Q. What is your business? A. Trunk maker.

Q. Now, where did you work on and previous to the 10th of April of the present year? A. Herkert & Meisel Trunk Company.

Q. How long have you been working there?

A. Off and on for fifteen years.

Q. And you were a member of the Local Union of Leatherworkers at that time, were you? A. Yes, sir.

Q. And left with the rest of the employes that also belonged to the Union at that time? A. Yes, sir.

Q. Now, after the strike was declared did you go down to the plant of this Company where you had been working?

A. On one occasion.

Q. Where was that located? A. How?

Q. Where was that place? A. Thirteenth and Chestnut.

Q. How long after the strike was that?

A. Oh, I should say about a week and a half.

Q. Was anybody with you? A. No.

Q. Did you try to intimidate any person at that time?

A. No.

Q. From working, going in or coming out of that factory?

A. No.

Q. Or working for the Herkert & Meisel Trunk Company?

A. No, sir.

435 Q. Did you talk to anybody?

A. Yes. There was two men come out and I was coming from the hall, and two men come out and I stopped on Twelfth and Chestnut. As they come up I asked them if they knew there was a strike on there. They says, "No." They says, "What department" I says "all departments."

Q. What did they say?

A. They says, "Well, we didn't know that." They says, "We will keep out of there hereafter."

Q. Now, did you say anything to these men of an intimidatory nature?

A. No, sir; that was all that was said.

Q. Did you try to—

A. No, that was all that was said.

Q. Was there anybody with you at the time you were down there? A. No.

Q. You were there by yourself?
A. I just happened to be passing and stopped as I see these two men coming.
Q. You have belonged to the Local Union for a number of years, have you not? A. Yes, sir.
Q. How long have you belonged to the Union?
A. Just about two years ago, since they have been organized.
Q. You have heard, I presume, the instructions given from time to time by the officials of the Union with reference to the pickets? A. Yes, sir.
Q. To conduct themselves peacefully? A. I have.
Q. Did you hear these instructions given at the Local Union meetings?
A. Well, the only instructions I heard was that there should be no violence used, none whatever.

436 Cross-Examination

By Mr. Holland:
Q. Did your Local Union tell you to go by there and if you saw men coming out of the factory to stop them?
A. No.
Q. Why did you do it?
A. I just happened to be passing.
Q. But you had no instructions from your Local Union to do that, did you; and you didn't know who those men were, did you? A. No.
Q. So you did know at the time you spoke to them that they didn't belong to the Local No. 66? A. Yes, sir.
Q. And you never asked them if they were members of organized labor, did you? A. No.
Q. But you merely went up there gratuitously, without any instructions from your Union, and told them there was a strike there? A. Yes, sir.
Q. What else did you say to them? A. That is all.
Q. What did they say?
A. They said they didn't know that.
Q. Who was around there picketing at the time?
A. Nobody that I know of.
Q. Where was it that those men came from, one by one, according to this testimony? A. I can't tell you that.
Q. Who sent you there? A. Nobody.
Q. Did you ever volunteer to be a picket? A. No.
Q. But you went up there and did this very effective work, did you, of your own volition? A. No.

Q. Mr. Reuter, or those gentlemen, never told you to carry on like that? A. No, sir.

Q. The truth is that they told you to conduct,—

437 A. They never told me anything.

Q. Did you not just get through telling Mr. Leahy that they told you to conduct yourself?

A. I will admit that. They gave me instructions not to use any violence; they give all men instructions.

Q. Why did you intercept those men coming out; did you not know that was not right to do it?

Mr. Leahy: That is objected to. I think under the Clayton Law he has a right to—

Mr. Holland: He has no right to stop anybody.

Mr. Leahy: He has the right to use peaceful persuasion—

Mr. Holland: He says this man didn't belong to—

The Court: I sustain the objection.

Mr. Holland: Q. Have you got any property of any kind?

A. No, sir.

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438 HENRY SCHNITZE, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. Kindly state your name, please.

A. Henry Schnitze.

Q. Where were you working on and prior to April 10th of the present year? A. Herkert & Meisel Trunk Company.

Q. Were you a member of Local Union No. 66 of the Leatherworkers at that time? A. Yes, sir.

Q. You left with the rest of the employes, did you?

A. Yes, sir.

Q. After the strike was declared were you ever in the vicinity of the Herkert & Meisel Trunk Company's factory?

A. I was.

Q. Were you there doing picket duty down there?

A. Yes, sir.

Q. How many days did you go there?

A. Just one morning.

Q. What? A. Just one morning.

Q. How long were you there? A. I guess about six—

Q. Speak up so we can hear you.
A. What day I was there?
Q. Yes. A. I can't say just the date.
Q. How long after the strike was it?
A. About three weeks.
Q. How long did you stay there at that time?
A. About one and one-half hours.
Q. Did you talk to anybody? A. Yes, I spoke to one man.
Q. One man, you say? A. Yes, sir.
Q. What did he say to you?
A. I asked him where he was going. He told me he was going there to tell the boss he was going to quit. I ask-
439 him why he was going to quit, and he said he didn't want to work while there was a strike on, and he was going to work in a shoe-shining parlor.
Q. Was that the only time you talked to anybody?
A. I spoke to one man. He said he was out of work and I said all right, but I thought he could find a better job.
Q. That was all that was said? A. Yes, sir.
Q. Did you ever try to intimidate anybody? A. No, sir.
Q. Or to prevent any person from taking your place?
A. No, sir.
Q. Or interfere with anybody that was going in or coming out of the factory? A. No, sir.
Q. Or use any bad language against anybody?
A. No, sir.
Q. Or enter into any kind of combination or conspiracy to destroy the interstate business of these complainants?
A. No, sir.
Q. Or did you know of anybody else doing that?
A. No, sir.
Q. Any other member of your organization? A. No.
Q. You didn't see any physical violence or hear any bad language while you were down there? A. No, sir.

Cross Examination

By Mr. Holland:
Q. How long were you a picket, altogether?
A. I just picketed one morning.
Q. You just picketed one morning? A. Yes, sir.
Q. And that morning you turned away two men?
A. No, I don't think I did.
440 Q. Did you not just get through saying you did?
A. Why, he had told me he was going to quit anyhow.
Q. But the other man that you told you would get a better job? A. He did not quit, no, sir; he went in.

Q. You undertook to tell him you would get him a better job?

A. No. I said I thought he could get a better job some place else.

Q. You were not working then, either, were you?

A. No, sir.

Q. Why did you not go to get the better job yourself?

A. I didn't want to work myself—

Q. But you would not let him work at Herkert & Meisel if you could help it? A. I didn't say he should not work there.

Q. At the same time you are out of work yourself, and you say you don't want a job? A. If I can get a job I want one.

Q. When you get the kind that suits you? A. Yes, sir.

Q. You only picketed an hour and a half in this strike that lasted since the 10th of April? A. Yes, sir.

Q. When you undertake to tell Mr. Leahy about violence, you don't know whether violence was committed or not, do you? A. Not while I was there.

Q. The only thing you know is that you turned back two men, is not that right? That is all.

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441 RUDOLPH KOOB, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Leahy:

Q. What is your name? A. Rudolph Koob.

Q. What was your business on and prior to the 10th of April of the present year? A. Trunk maker.

Q. Where?

A. Herkert & Meisel Trunk Company, Thirteenth and Chestnut.

Q. And you left the Company, did you, at the time of the Strike? A. Yes, sir.

Q. Now, after that did you visit the factory or the premises adjacent thereto, of the Herkert & Meisel Trunk Company? A. Yes, sir.

Q. Did you do any picket duty there? A. Yes, sir.

Q. How long were you there?

A. I was there—came in the morning and stayed from about quarter after seven to about nine, and four until about quarter after five.

Q. How many times were you there?

A. Well, in all about seventeen days, I guess.

Q. During that time who else was with you, was anybody?

A. Well, there was quite a few that was there.

Q. Speak up.

A. There was quite a few that was there. We would march up and down the sidewalk there.

Q. During that time did you try to stop anybody
442 going into that factory, or coming out?

A. In the morning I saw few people coming, but I said there was a strike on.

Q. That is all you ever said? A. Yes, sir.

Q. Did you use any violent language toward anybody?

A. No, sir.

Q. Did you try to intimidate anybody from coming in or going out of that factory? A. No, sir.

Q. Did you see anybody else do so? A. No, sir.

Q. So all you did was to say to the persons going in or coming out, that there was a strike on, and that is all you did? A. Yes, sir.

Cross-Examination

By Mr. Holland:

Q. How many persons did you tell that to in one day?

A. Well, on one day what I can remember I told two men that, and on another day I remember I told about four.

Q. On one day you told two men and on another day you told about four? A. Yes, sir.

Q. Did anybody of the other pickets do any of the talking with either of those two or four?

A. No, not the pickets I was with.

Q. How many pickets were you with? A. One.

Q. You were with one picket? A. Yes, sir.

Q. What part of the territory did you cover?

A. I covered from Twelfth and Chestnut to Thirteenth and Chestnut,, back and forth.

A. And when you would be going west the other pickets would be coming east? A. Yes, sir.

443 Q. You alternated in that way? A. Yes, sir.

Q. Where did you usually meet with reference to the entrance of the factory?

A. Well, we had no certain point to meet.

Q. You started from Twelfth Street and they would start from Thirteenth, or did you start from the alley, which?

A. We did not do that.

Q. What did you do?

A. Sometimes there was as high as six there. there was more than four.

Q. The highest you ever saw was six, or did you have a few more?

A. On one night after the meeting there, we walked by and we stopped around the factory, eighteen—

Q. That was eighteen counting the pickets?

A. Counting all. I don't know whether it was all pickets.

Q. They were there, anyhow, eighteen? A. Yes.

Q. How many did you know?

A. About seven altogether.

Q. Seven of the eighteen? A. Yes, sir.

Q. Was that at the time the factory was let out?

A. That was at the time the factory was let out, yes, at that time.

Q. Did those men go into the factory that you told not to go in?

A. That is in the morning; they said, "all right," and they walked by.

Q. They didn't go in? A. No, sir.

Q. Did the other men—

A. I had good luck that day. They passed it up.

Q. You had pretty good luck? A. Yes, sir.

444 Q. How many was in that crowd, just four?

A. Just four.

Q. They thought they would pass on?

A. Yes, they said, "all right," and walked on.

Q. The next day did you do anything?

A. I never did anything.

Q. That was the sum total of your efforts, turning away six men, was it? A. Yes, sir.

Q. Did you talk to anybody else besides those six?

A. No, sir.

Q. Do you know the names of the pickets who were with you? A. Tony Pauley.

Q. Who else?

A. Tom Halliburton. That was the onliest one I knew. The others worked there but I didn't know their names, but I knew they all worked there.

Q. You knew they all worked there? A. Yes, sir.

Q. Did you see any ladies around there doing any picketing? A. Well, once I saw Esther Bradley.

Q. What side of the street did she go on?

A. The same side I took.

Q. Were you walking side by side? A. Yes, sir.

Q. You never saw Esther say a word to anybody, did you?

A. Not while I was with her.

Q. She didn't handle the ladies, did she?
A. Not as long as I was with her.
Q. Do you know what purpose she was there for?
A. To tell that the strike was on.
Q. To tell that the strike was on? A. Yes, sir.
445 Q. Did you see any other women there?
A. No, sir.
Q. You picketed, you say, altogether for seventeen days?
A. I was on for seventeen days, yes.

Mr. Holland: That is all.

(To Mr. Leahy) I won't put the usual question about this man's financial standing. Do you waive that?

Mr. Leahy: I waive that.

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446 WILLIAM BALMER, a witness of lawful age, being duly produced, sworn and examined, testified as follows:

Direct Examination

By Mr. Leahy:
Q. What is your name? A. William Balmer.
Q. Are you a member of Local Union No. 66 of the Leatherworkers Union? A. Yes, sir.
Q. And you were a member of that Union on April 10th, 1920? A. Yes sir.
Q. Where were you working at that time?
A. Herkert & Meisel, Thirteenth and Chestnut.
Q. Did you leave on that day when the strike was declared? A. Yes, sir.
Q. You are one of the defendants in this case and you have been served with a copy of the restraining order, have you? A. Yes, sir.
Q. Did you ever try to intimidate anybody in the employ of the complainants? A. No, sir.
Q. To prevent them from going to work for the complainants, going in or coming out? A. No, sir.
Q. Have you ever gone to their factory?
A. Only one evening I passed there.
Q. Where were you coming from then?
A. The hall, at Thirteenth and Chouteau.
Q. And passed by the place as you were coming from
447 there? A. Yes, sir.
Q. You never did picket duty? A. No, sir.
Q. And never tried to intimidate anybody? A. No, sir.

Cross Examination

By Mr. Holland:

Q. You were never a picket? A. No, sir.

Q. Were you not asked in the hall to volunteer?

A. No, sir.

Q. Did you not hear the call for volunteers when you attended the meetings—did you attend the meetings?

A. Yes, sir.

Q. Did you hear that? A. Yes sir.

Q. Do you know how many pickets were picketing in one of those plants? A. No.

Q. You don't know how they acted down there, but you know the same organization was running the strike at the different factories? A. Yes, sir.

Q. All you know is what you did yourself?

A. No, those all—

Q. You don't know whether those men called people indecent names; you don't know a thing about it?

A. That is right.

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448 AL BIRKENMEIER, recalled, testified in behalf of defendants as follows:

Direct Examination

By Mr. Leahy:

Q. Mr. Birkenmeier, you have already testified, and you are the business agent of the Local Union? A. Yes, sir.

Q. A defendant in this case. Now, I wanted to ask you—I don't know whether I asked you before—if at the time the strike was declared here Mr. Schilling was here in St. Louis.

A. Mr. Schilling?

Q. Yes. A. Yes, he was here.

Q. Was he sick at that time?

A. Yes, he took down sick—

Q. And had nothing to do with the strike?

A. And had nothing to do with the strike.

Q. You have already testified that you yourself had no control over the strike, or no part in it, as far as conducting it, or anything of that kind? A. Yes, sir.

Q. Now, the business office, I believe, is at Tenth and Chestnut Streets? A. Yes, sir.

Q. And after this case was brought, it has been already testified that a desk was broken open? A. Yes, sir.

Q. Did you have any records at any time in the desk, of your meetings;?

A. Well, I had some few, but they were not much of any importance. The important matter I had stuck behind the desk.

Q. Was there money in the desk at that time?

A. Yes, sir.

449 Q. Was any portion of that taken?

A. Between a hundred and twenty-five and a hundred and fifty dollars in cash.

The Court: You went over that this morning, gentlemen. There is no necessity of hearing it twice. Of course, it is wholly irrelevant unless you can bring it home to some of these officials, or their agents.

(Here ensued colloquy.)

Mr. Leahy: Q. Now, Mr. Birkenmeier, were you present at the meetings of the organization, of your Local Union, after the strike was declared?

A. Yes, all of them.

Q. And did you hear the instructions given by the chair on these occasions by your chairman?

A. In regards to what?

Q. In regard to conducting themselves during the strike and not to use violence or anything of that character?

A. We did that at every meeting.

Q. That was done at every meeting?

A. Every meeting.

Q. Every one of your members, not alone the pickets, but every one of your members, were instructed not to use violence or to resort to illegal methods?

A. That was our instructions, they were instructed, every one, as far as that is concerned. We want to keep away from trouble. We realize that causes trouble.

Q. That was the advice that was given at all times. You didn't have anything to do with the calling of the strike, did you?

A. Not a thing.

Q. That was done by the employes themselves?

A. A motion put, yes, on the strike, by voting yes, out

450 on strike. It seems as though the members vote themselves out on strike first, and when they go back to work they vote themselves back into work.

Q. And you didn't interfere with them in any way, did you?

A. I have nothing to do with it. If one individual in our organization tries to take anything upon his shoulders the

other eight hundred and forty-nine will ask him where he gets it.

Cross Examination.

By Mr. Holland:

Q. You never issued any instructions to those men to leave people who didn't belong to your order alone, if they saw them going into the factory, did you?

A. I have nothing to do with that.

Q. No? Who has?

A. We have what we call a strike committee.

Q. Somebody must be doing it. How do you expect to win this strike? By what kind of methods?

A. We expect to win the strike in this way—we can't lose it. I will make it clear to you in a second. If all our members are working elsewhere and don't have to work at that trunk shop that will win the strike.

Q. Then why don't you let people alone who don't belong to your union?

A. That has nothing to do with me.

Q. I understand that, but I am speaking about the policy of your Local Union. You say you will win the strike anyhow; Now, if that is true why do you interfere with men who don't belong to your Union?

Mr. Leahy: I object to that question for the simple reason that the members of a union have, as your Honor has declared and as the Clayton law says, the right to be free to use peaceful persuasion—

451 The Court: The objection, of course, is an argument, but I shall sustain it for numerous reasons not mentioned by you.

Mr. Holland: Q. The policy of your pickets is to invite every man and every woman that goes in, or that they know is going into that factory, to stay out, is it not?

Mr. Leahy: I object again, they have a right to do that. I don't see why this witness should be questioned about it.

The Court: (To the witness) Answer the question.

The Witness: I didn't quite get that.

(Previous question read)

A. I don't know what the policy of the pickets is. The way I see it, though, and the way I can see it from the position I am in, I see it from the position of every man protecting his own interests. It is not a policy of the pickets. It is

simply second nature for man to protect his interests in regard to his own job; that is, this Local is running along that way, for the simple reason, due to the fact that there are so many of our members working, that all that is immaterial. It has no bearing on the strike whatever.

Q. You are winning the strike without the pickets?

A. Yes, we don't have to have any more pickets whatever.

Q. Then why do you picket the place, if that is true?

A. I don't know that they are picketing them; I don't believe right now they are picketing anything.

Q. You mean since the Court's order?

A. We never paid any attention to the Court whatever, as far as that is concerned, with the exception of coming here and testifying when we were called on. That is

452 all.

Q. You know the factories were all posted with a copy of the Court's order?

A. Yes; I have laughed at them, I have called them billboards, on the strength of it.

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453 WILLIAM BRUNS, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. State your name.

A. William Bruns.

Q. And your occupation?

A. A suitcase maker.

Q. Where were you employed on and previous to the 10th of April, 1920?

A. P. C. Murphy Trunk Company.

Q. Did you leave on that day?

A. Yes, sir.

Q. You are a member of the Local Union?

A. Yes, sir.

Q. Of the Leatherworkers, and were at that time?

A. Yes, sir.

Q. What official position did you hold at that time in the Local Union?

A. Why, I was a member of a committee that met the bosses of the manufacturers.

Q. I believe you were trying to arrange or carry through successfully the negotations to settle this whole controversy?

A. Yes, sir.

Q. Were you present at the meeting of the Local Union?

A. Yes, sir.

Q. And I presume on these occasions you heard the statements made by the chair?

A. Yes, sir.

Q. Notifying members not to be guilty of any violence during the strike, or any thing of that kind?

A. Yes, sir.

Q. Now, have you ever been on the picket line your-
454 self?

A. No, sir.

Q. Ever try to intimidate anybody?

A. No, sir.

Q. Or driven anybody away from working for any of these complainants?

A. No, sir.

Q. Or interfered with them at all?

A. No, sir.

Q. You have attended meetings down there, have you?

A. Yes, sir.

Q. And you have seen the men come out from their hall and congregate around there?

A. I have.

Q. Have you ever seen any of them intimidate anybody as far as the employes of the Murphy Company, or anybody else, was concerned?

A. No, I have not.

Cross Examination.

By Mr. Holland:

Q. You were never on the picket line yourself?

A. No, sir.

Q. You don't know anything at all about what the pickets did?

A. Well, I heard a few remarks, being in the crowd, of what was going on.

Q. The truth is you have attended every meeting, practically that has been held there, including the one where they voted to strike?

A. Yes, sir.

Q. And you have never heard presented at any meeting that you were present at a report from the pickets?

A. Why, sure.

Q. You did?

A. Yes, sir.

Q. Was that report in writing?
A. No, sir.
Q. What did they report if you remember?
455 A. Just what the conditions were that prevailed at each and every shop.
Q. Do you remember the conditions they said prevailed?
A. Why, that they were all peaceful.
Q. Anything else?
A. No, sir.
Q. Do you know who submitted those reports?
A. Why, the people that were selected to have charge of the pickets at the various shops.
Q. You know their names, don't you?
A. Yes, I have heard them mentioned here.
Q. How many pickets were assigned to each captain?
A. Three.
Q. How many captains were there?
A. One for each place.
Q. One for each place?
A. Yes, sir.
Q. Who did they assign?
A. The three men that were assigned, the men that had charge of the pickets at the various shops.
Q. Who were they?
A. Why, men selected, those volunteering. They had trouble getting pickets.
Q. Thas is, if Mr. Kaysing and those men picked the captains?
A. No, sir.
Q. The men volunteered and were made captains?
A. Yes, sir.
Q. The captain picked his own men?
A. Yes, sir.
Q. Have you ever seen any picket line since this strike was inaugurated any time?
A. Yes, sir.
Q. Where?
A. P. C. Murphy.
Q. When was that?
A. After the 10th day of April.
Q. Who was in charge?
A. Burg at that time.
456 Q. Who?
A. Burg.
Q. At that time?
A. Yes, sir.

Q. How many pickets were under his command in the morning, or evening, or noon time?

A. Three.

Q. How many pickets did he maintain after the Court's order was posted?

A. None that I know of.

Re-direct Examination.

By Mr. Leahy:

Q. Do you know whether Burg has left the City since that time?

A. He went into business of some kind of his own. I don't know what it is. I haven't seen him since.

Q. Well, he is in the City?

A. No, not that I know of.

Mr. Leahy: Now, your Honor, I think we have examined all the defendants in the case. The rest of the testimony that I have to offer would be of accumulative nature. I am rather in a quandary as to some testimony that was offered here relative to the statements which they allege were made to them by people they didn't know; they were unable to identify them as members of this organization. I thought at the time that such testimony wouldn't be at all binding upon these defendants, or have tendency to connect them with any improper conduct in connection with the strike. If I were to combat it, however, the only way that I know that I could successfully do that would be by calling every single member of this organization to testify that he never used
457 that particular language.

The Court: I understand there were some eight hundered and fifty. Do you happen to know of any court in the United States that would sit and hear that?

Mr. Leahy: I do not, but I want your Honor to understand the difficulty that I am in. If your Honor holds that that testimony is pertinent to this inquiry, the only course open to me is to make an offer of proof, which I will ask your Honor for leave to do.

The Court: I will hear it provided you bring the whole eight hundred and fifty in. We must either have them all or none, gentlemen, and if you will agree to bring the whole eight hundred and fifty I will hear them, and let the record so show, but I would enforce a point of equity doctrine—I will continue the further hearing of this case until tomorrow

at ten o'clock, and you may study about it in the meanwhile. There certainly ought to be some arrangement made by which can be obviated the necessity of your bringing, or having to produce over eight hundred members of a Union. You have produced some twenty or thirty already. I appreciate the rapidity with which you have gotten forward. Of course, you have asked leading questions and conclusions on both sides in order to expedite the case, but I trust you will be able to reach some conclusion between counsel.

Mr. Holland: I understand Mr. Leahy has no more testimony to offer.

Mr. Leahy: I won't say that. I don't know whether I have.

At this point adjournment was had until June 2, 1920, at ten o'clock A. M.

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458 Met pursuant to adjournment as above, on June 2, 1920, at ten o'clock A. M.

Present: Same parties as before.

The following proceedings were had:

GEORGE WENK, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of defendants as follows:

Direct Examination.

By Mr. Leahy:

Q. State your name, please.
A. George Wenk.
Q. What was your business on and previous to April 10th of the present year?
A. I was working for—
Q. You were a leatherworker?
A. I was a leatherworker, yes, sir.
Q. Where did you work?
A. I work for Bradley now.
Q. Where did you work on the 10th of April?
A. On a machine. I was working on a machine.
Q. For whom?
A. For Herkert & Meisel.
Q. You were a leatherworker?
A. Yes, sir.

Q. And you were at that time and are you now a member of Local Union No. 66 of leatherworkers?

A. Yes, sir.

Q. Did you leave the employment of the Herkert & Meisel Trunk Company at the same time that all of those left, after the strike was declared?

A. Yes, sir.

Q. Did you ever after that time go to the premises of the Herkert & Meisel Trunk Company, or to their place
459 of business?

A. There was money coming to me. I went in there a week afterward.

Q. You went in there a week afterward?

A. Yes, sir.

Q. And that was the only time that you went there?

A. That was the only time I went there.

Q. You are one of the defendants, you were served with a copy of the order in this case, the restraining order, and you are one of the defendants named in the complainants' bill?

A. Yes, sir.

Q. Have you threatened or intimidated any employe of the Herkert & Meisel Trunk Company, or any of the parties plaintiff mentioned in the petition?

A. No.

Q. You have not threatened or intimidated any body?

A. No.

Q. And you don't know of anybody that has been intimidated, in their employ, or anybody else?

A. No.

Q. Working for any of these trunk manufacturers, do you?

A. No.

Mr. Leahy: That is all.

Cross Examination.

By Mr. Holland:

Q. How long have you belonged to Local Union No. 66?

A. Since the Union started in.

Q. How long is that?

A. About two and a half months, I guess.

Q. About two and a half months?

A. I guess so.

Q. Were you present at a meeting of the Union on or about the 10th day of April of this year?

A. If I was a member.

Q. Were you at any meeting of the Union about the 9th or 10th of April?

A. I can't remember that.

460 Q. You don't remember that. Have you ever attended any meetings of the Union at any time?

A. Oh, yes; I attended the meetings all right, yes.

Q. Did anybody at the Union meeting ever tell you that they were going to call a strike?

A. No, not that I can remember now.

Q. Were you there when the strike was voted on?

A. I was there, yes, sir.

Q. How did you vote? A. I voted yes.

Q. You voted to strike? A. Yes, sir.

Q. Did you strike?

A. Yes, I went out with all the fellows.

Q. You went out with the rest of them? A. Yes, sir.

Q. Were you present when anybody was called on for the purpose of picketing the plants? A. No.

Q. They didn't call for any volunteers, did they?

A. I volunteered.

Q. You Volunteered? A. Yes, sir.

Q. What for? A. I didn't do the picketing.

Q. You said you would but you didn't, is that it?

A. No.

Q. What did you do?

A. I just was standing on the corner, that was all.

Q. You were standing at the corner where?

A. On Twelfth Street.

Q. Twelfth and what? A. Twelfth and Chestnut.

Q. That is near Herkert & Meisel's factory, is it not?

A. Yes, sir. Q. Who stood on the corner with you?

A. I can't remember all of them.

461 Q. Was there anybody there at all that you knew to be members of the Union, outside of yourself?

A. Oh, they was here yesterday.

Q. Those who appeared here yesterday were on the corner with you, is that it? A. Yes, sir.

Q. What?

A. Yes, sir. Q. How many of them?

A. Oh, I don't know; about five or six.

Q. And you stood on the corner with them. Now, you just told Mr. Leahy in answer to his question that all you did was to go there to get your money.

A. Yes. In the factory, I said I went in the factory. That is not the corner.

Q. Could you give me the names of the five or six men that were picketing that plant with you?

Mr. Leahy: He didn't say he was picketing the plant.

Mr. Holland: He said he was.

Q. Could you give me the names of the five or six men that were?

A. I can't give you the names. I don't know them fellows well.

Q. How often did that occur, how often did you go there?

A. I was just standing at the corner, that is all.

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462 AL BIRKENMEIER, recalled, testified in behalf of defendants as follows:

Direct Examination

By Mr. Leahy:

Q. Your name is Al Birkenmeier; What is your first name? A. Al.

Q. Now, in the course of your examination, I believe it was yesterday, there was some question came up, you were asked some question, with reference to the posting of some orders of the Court of the restraining order; there was some reference made to that: Did you see any of these restraining orders published?

A. No, I never seen them personally; I just heard of them, that is all. I make connections with the boys every day in the week and I get that information in a general way.

Q. You were referring yesterday to some orders of the Court which you had seen: I wish you would explain that.

A. That I had seen?

Q. No. You were referring yesterday to some orders of the Court; you mentioned that in connection with a question asked by Mr. Holland.

A. I didn't see these things that was spoken of. I just got it in a general way from the members in general; the members, as we meet in the hall that way, why, any little old thing that would happen in the run of the day or two, naturally, somebody has got something to say about it. Somebody said to me, "Did you see those posters on the factory?" Why I have never went to a factory since this strike started. The closest I have been to the factory was the P. C. Murphy

463 factory, which compels me to be within a block of that place due to the fact that we meet at a hall one block away from there. Now, as you look out those windows you

can see the entire factory before you. When somebody had mentioned to me about posters, or something of that kind, being on the factory. I noticed something at the distance—I couldn't say whether it was a poster, or whether it was an order of Court, or what it was. Somebody made the remark in regard to "it looks like a joke; they are making a billboard of the place," and we had a little joke about it.

Q. And that was what you meant yesterday when you mentioned the Court order; not that you wanted to diregard the order, but the fact that the factory had been all covered with these notices? A. Yes, that is it.

Q. It was not meant at any time to disregard the order of the Court, but to obey it?

A. There never has been such a thing spoken of.

Cross Examination

By Mr. Holland:

Q. Do you know, or do you not know, whether any of your men have picketed since the Court issued the restraining orders?

A. I told you more than once that I haven't anything to do with the picket line.

Q. I am asking you whether you know whether or not they have picketed since the Court issued this order.

Mr. Leahy: The question is objected to, if the Court please, because I take it that under the order the Court issued the defendants had a right to picket, provided
464 they conducted themselves peaceably and didn't unreasonably or illegally interfere with any person.

The Court: I will hear it. Objection overruled.

To which ruling of the Court the defendants, by their counsel, then and there, at the time, duly excepted.

Mr. Holland: Q. What is your answer to that?

A. Did I know?

Q. Do you know whether or not any of your men have picketed since the Court issued the restraining order against your association and your members?

A. No, I don't know.

Q. Will you say they did not?

A. I wouldn't say that they did not, nor wouldn't say they did.

Q. Don't you know that every day you have had opportunity to see Murphy's plant and you had occasion to notice—

A. No, sir, I never had an opportunity every day to see Murphy's plant.

Q. But were you not there each day at Choteau and Thirteenth? A. No, sir.

Q. Where do you spend most of your time?

A. 1007 Chestnut, at the office.

Q. Do you undertake to tell this Court that you were never served, or that knowledge of this order was never brought home to you?

A. No, sir, I don't say that I didn't. I was served.

Q. You were served? A. Yes, sir.

Q. And you necessarily knew the contents of that order, did you not? A. Yes, sir.

465 Q. And what you meant yesterday was this: That you knew the contents of the order, but that you didn't pay any attention to it? Were not those your words?

A. When I said I didn't pay any attention to it I had reference to this: There has not been a time that I know of in this case that there has been any one of our men done anything that was against the law, nor I have not done anything myself against the law—

Q. I am not asking about—

Mr. Leahy: Let him finish.

The witness: If they had done anything against the law they would have been arrested and had charges to face in the face of that fact. Now, I haven't heard of any of our men having any trouble, not one instance, and I am the man that knows, and I haven't had any myself. Why should I fear that order? That is what I am driving at. That order didn't effect me a little bit, only that I knew that I had to appear here. That is all.

Mr. Holland: Q. Did you instruct your pickets to keep away from intercepting people going to their factories after the order was issued?

A. I told you three or four times I had nothing to do with the pickets.

Q. You pay them?

A. No, sir; not a penny do we pay them pickets.

Q. But I mean the benefits. A. Strike benefits?

Q. You pay that?

A. Every member is entitled to that benefit whether he is a picket or not a picket.

Q. And every dollar that is paid out goes through your hands?

A. Every dollar that is paid out goes through my
466 hands.

Mr. Holland: That is all.

Mr. Leahy: That is all, Mr. Birkenmeier.

The Witness: Now, would I be in order to make a statement?

Mr. Holland: Ask his Honor.

The Court: You can say anything that is relevant.

The Witness: I would like to speak before these gentlemen here as the manufacturers. I want to make one or two things clear to these gentlemen. They don't seem to understand how we run our Union. They seem to think that there are five, six, seven, or one or two men, that are leaders in this affair. I have been quoted in the newspaper as being a leader in this strike. I want to make it clear that I am an employe of Local No. 66: that I am not issuing orders to anybody; that I am under orders—just the reverse; that what they tell me to do is what I have got to do, and I don't tell anybody else what to do, because I have got my own business to settle for. As far as the leaders are concerned there is no such thing as leaders. These men have voted themselves out on strike each and every individual. They have appointed men to take and run this affair. We all know that eight hundred and fifty couldn't run it. Now, I think that has cleared how our business is done. I couldn't do anything unless it is brought up on the floor. It is voted on. If these men were to go back to work today they wouldn't go back until the body voted on it to go back. It goes to show that the leaders that you always think are in the game, that are doing the steering, or figuring in this game, is absolutely untrue.

There is no such thing as leaders. I will go on further
467 to state that I realize that you are losing money. I realize that we are losing money, and you are losing more money than we are. I realize, and you have got to realize, that you are all at a loss, where we have nothing to lose only a job and a little money. We have all lost our job already and we don't have to lose anything further. You are still losing and you are going to continue to lose unless you settle this strike. This strike is hanging fire on what I might say is a thread. It is hinging on one little bit of an obstacle—

The Court: Well, I am afraid, Mr. Birkenmeier, that you are getting out of the issues here.

The witness: Well, your Honor, I have never had an opportunity to make it clear to these men.

The Court: I am glad that you have it now, and I hope it will do some good, sir, to both sides, but you cannot go any further because I am very busy. You have made yourself very clear.

Mr. Leahy: That is all.

Mr. Holland: That is all.

O K (signed)MAT J. HOLLAND
Solicitor for Complainants

Which was all of the evidence offered at the hearing.

After oral arguments of counsel the case was by the Court taken under advisement, the temporary restraining order to remain in full force and effect, under the bond heretofore given.

Counsel were given permission to file briefs.

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468 (Consent of Counsel for Complainant to filing of Statement of Evidence, etc.)

I hereby certify that I have examined the stenographer's transcript of the evidence in this cause filed by consent of the plaintiffs and defendants in lieu of the statement of the evidence as provided by the equity rules of the United States Supreme Court and by the rules of the United States Circuit Court of Appeals for the Eighth Circiut, and find the said transcript of the evidence to be true, complete, properly reported and prepared, and waive all objections to same, and hereby consent that same may be filed and approved by the Judge of the District Court, Honorable C. B. Faris, and made part of the record in this cause.

Dated March 15th 1921.

(Signed) MAT J. HOLLAND
Solicitor for Complainants.

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469 Certificate of the Judge to the Stenographer's transcript of the Evidence.

I, C. B. Faris, Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing stenographer's transcript of the evidence is a true, complete and proper report and statement of all the evidence in the case heard before me as Judge of the said District Court upon the trial of the above-entitled cause, and I do hereby approve the same and certify that the said stenographer's transcript of the evidence is a true and complete report of the evidence heard by said Court upon the complainants' motion for temporary injunction, and upon which both complainants and defendants agreed to submit this cause at the final hearing.

470 And forasmuch as said stenographer's transcript of the evidence does not appear of record, I hereby approve and certify the same.

I further certify that before signing the same proof was presented to me that the said stenographer's transcript of the evidence had been read over and approved by the solicitor for the complainants in this cause, and all exceptions and objections to same waived by the complainants, and the complainants consented that the said stenographer's transcript of the evidence might be filed and approved by the Judge of this Court and made part of the record in this cause.

In Witness Whereof I have hereunto set my hand and seal this 15th day of March, 1921.

(Signed) C. B. FARIS
Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

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471 Order of the District Court Approving Stenographer's Transcript of the Evidence.

And now on the ..... day of March, 1921, at the hour of ten o'clock A. M. come all of the defendants in the above-entitled cause save and except Edward Schilling, Henry Schnitz and Robert Worsing, against whom the said complainant's bill was dismissed, and present to the Court the above and foregoing stenographer's transcript of the evidence heard in the said cause on the plaintiffs' motion for a temporary

injunction herein, and upon the defendants' motion to dissolve the preliminary restraining order theretofore issued in the said cause, and upon which evidence this cause was submitted to the Court on final hearing, and the plaintiffs and defendants herein heretofore consented that the steno-
472 grapher's transcript of the entire testimony heard in the said cause should be filed in this Court in lieu of the statement of the evidence provided by the equity rules of the Supreme Court of the United States and the rules of the United States Circuit Court of Appeals for the Eighth Circuit, and the Court having heretofore ordered that the said stenographer's transcript of the testimony in the said cause should be filed in this Court in lieu of the said statement of evidence, as provided by the equity rules of the Supreme Court of the United States and by the rules of the Circuit Court of Appeals for the Eighth Circuit.

And also come the said defendants and present proof to this Court that the plaintiffs herein, through their solicitor of record, Mat J. Holland, have examined and approved the said stenographer's transcript of the evidence in this cause and have waived the filing of the said stenographer's transcript of the evidence or any statement of same as provided by the rules of the United States Circuit Court of Appeals for the Eighth Circuit, and have waived all objections or exceptions to the said stenographer's transcript of the evidence, and the Court having examined the same, is of the opinion that the said stenographer's transcript of the evidence in the said cause is true and complete and properly prepared, and the same ought to be approved and signed by the Court.

It is, therefore, ordered, adjudged and decreed by the Court, the Honorable C. B. Faris, Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, being the Judge who heard the said evidence, sitting in said Court, that the said stenographer's transcript of the evidence is true, complete and properly prepared, and that the same is hereby approved by this Court and by the said Judge who heard and tried said cause.

It is, therefore, ordered, adjudged and decreed by the Court that the said stenographer's transcript of the evidence be and the same is hereby approved, and that the same
473 contains all of the evidence heard by the said Court upon the trial of the said cause,

It is further ordered that same may be filed, approved and made a part of the record in said cause.

All of which is ordered, adjudged and decreed this 15th day of March, 1921.

(Signed) C. B. FARIS
Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

(Endorsed: "Filed Mch 15 1921 W. W. Nall, Clerk.")

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474 Praecipe for Transcript.

To the Honorable W. W. Nall, Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:—

Whereas, the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, on the 7th day of February, 1921, entered an order allowing to the defendants in said cause an appeal from the final injunction or decree of the said District Court entered in said cause on the 15th day of January, 1921, to the United States Circuit Court of Appeals for the Eighth Circuit.

Will you, therefore, please prepare a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings in said cause to be transmitted to the said United States Circuit Court of Appeals for the Eighth Circuit, in manner and form as provided by law, and will you please include therein the following:

1. A copy of the original bill of complaint filed herein by the plaintiffs, together with all affidavits attached thereto and the date of filing in your office.

2. A copy of the order of the said District Court entered in said cause on the ..... day of ....., 1920, granting a preliminary restraining order against the defendants, together with the file marks of the Clerk thereon.

474a 3. A copy of the bond filed by plaintiffs herein on the granting of such preliminary restraining order together with the order of said District Court approving said bond, and the file marks placed thereon by the Clerk.

4. A copy of the defendant's motion to disolve said preliminary restraining order together with the file marks of the Clerk thereon.

5. A copy of the defendants' return to the order to show cause why a temporary injunction should not be issued in said cause as prayed, together with the file marks of the Clerk thereon.

6. A copy of the defendants' answer to the Bill of Complaint.

7. A copy of the defendants' motion to dismiss the plaintiffs' Bill of Complaint, together with the file marks of the Clerk thereon.

8. All orders entered by the Court in the said cause except the order granting the preliminary restraining order heretofore called for and including the interlocutory decree of injunction of the said Court, and the decree of January 15, 1921, in making the temporary injunction theretofore issued permanent.

9. A copy of the order of said District Court overruling defendants' motions to dismiss the complainants' bill.

10. A copy of the written opinion of the Court.

11. A copy of the decree of the permanent injunction issued on the 15th of January, 1921, in this cause by the said Court.

12. A copy of the stipulation of complainants and defendants that the said cause might be submitted to the Court on the evidence taken at the hearing for temporary injunction.

13. The stenographer's transcript of the entire evidence heard by the Court on the hearing of plaintiffs' motion for temporary injunction herein together with the signature of the Judge thereto and the file marks thereon.

14. A copy of the defendants' motion for a rehearing and the Courts order overruling the same.

15. A copy of the defendants' petition in open Court for an appeal herein, the order of the Court allowing the same, fixing the amount of the bond and approving the bond on appeal, the assignment of errors filed in the said petition for appeal, and copy of the bond filed on appeal together with

the order of the Court approving the form and sufficiency of the same.

475 16. A copy of the notice of appeal served on the Solicitor for the Complainants, notifying them that the defendants would present to the said District Court of the United States, a petition for an appeal from the decree rendered in this cause by the Court on the 15th day of January, 1921, to the United States Court of Appeals for the Eighth District, together with a receipt of the copy of said notice.

17. A copy of the order of the Court directing that the entire testimony of witnesses in this cause taken at the hearing on the temporary injunction, and submitted to this Court at the final hearing of the said cause, as same is contained in the Bill of Exceptions, should be reproduced in the exact words of the interrogator, and witnesses, in lieu of the narrative form provided for in Rule 10, of the United States Circuit Court of Appeals.

18. A copy of the order of the Court extending the time for presentation of the stenographer's transcript of the evidence to April 7th, 1921.

19. A copy of the certificate of solicitor for complainants to stenographer's transcript of the evidence and consenting that same may be filed in lieu of the statements of the evidence, as provided by the equity rules of the United States Supreme Court, and the United States Circuit Court of Appeals of the Eighth District, approving said transcript, waiving all objections to same, and consenting that same may be filed and approved by the Judge and made part of the record in this cause.

20. A copy of the certificate of the Judge to the stenographer's transcript of the evidence, approving same and ordering that it be filed and made part of the record in this cause.

21. A copy of this praecipe.

22. Your certificate certifying to the correctness of such transcript.

All of which is respectfully prayed for and requested.

(Signed) JOHN P. LEAHY
(Signed) LENA FRANK
Solicitors for United Leather Workers International Union, Local Lodge or Union No. 66, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Benjamin Schnitz, Theodore Summers, Charles Tadesco, Fred Tentchert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, William Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo, Pauley, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus, Nenninger, George Wenk, being all of the defendants in the above entitled cause except Henry Schnitz, Edward Schilling and Robert Worsing.

Received copy of written praecipe and consent that same may be filed and exceptions to time waived.

(Signed) MAT J. HOLLAND
Atty. for Complainants.

(Indorsed: "Filed May 24, 1921. Jas. J. O'Connor, Clerk.")

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476 (Clerk's Certificate to Transcript.)

United States of America,
Eastern Division of the Eastern Judicial
District of Missouri—ss.

I, Jas. J. O'Connor, Clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto atached is a true transcript of the record in cause numbered 5353 of causes in said Court, wherein Herkert &

Meisel Trunk Company, a corporation, and others, are complainants, and United Leather Workers International Union, and others, are defendants (save and except as restricted by the Praecipe for Transcript heretofore set out); as fully as the same remains on file and of record in said cause in my office.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said Court at office in the City of St. Louis, in the Eastern Division of said District this 31st day of May, in the year of our Lord nineteen hundred and twenty-one.

Seal
U. S. Dist Court
East. Div.
East. Jud. Dist.
Mo.

JAS. J. O'CONNOR
Clerk of Said Court.
By Adam H. Jones
Deputy.

Filed Jun. 2, 1921. E. E. Koch, Clerk.

320 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellants.)

United States Circuit Court of Appeals, Eighth Circuit.

United Leather Workers International Union, and others,
Appellants,
No. 5865 vs.
Herkert & Meisel Trunk Company, et al.

The Clerk will enter my appearance as Counsel for the Appellants.

JOHN P. LEAHY.

(Endorsed). Filed in U. Circuit Court of Appeals, Jun 17, 1921.

(Appearance of Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

MAT J. HOLLAND,
CHAS. A. HOUTS.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 7, 1921.

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321 (Appearance of Counsel for Amicus Curiae.)

The Clerk will enter my appearance as Counsel for Amicus Curiae.

WALTER H. SAUNDERS.
Counsel for Amicus Curiae.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Mar. 22, 1922.

(Order of Submission.)

December Term, 1921,

Tuesday, January 10, 1922.

This cause having been passed and now being called for hearing, argument was commenced by Mr. John P. Leahy for appellants, continued by Mr. Charles A. Houts for appellees and concluded by Mr. Walter H. Saunders as amicus curiae.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

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322 (Opinion.)

United States Circuit Court of Appeals Eighth Circuit.

September Term, A. D. 1922.

Appeal from the District Court of the United States for the Eastern District of Missouri.

United Leather Workers International Union, et al., Appellants,
No. 5865. vs
Herkert and Meisel Trunk Company, a corporation, et al., Appellees.

Mr. John P. Leahy (Miss Lena Frank was with him on the brief), for appellants.

Mr. Charles A. Houts (Mr. Mat J. Holland was with him on the brief), for appellees.

Mr. Walter H. Saunders as amicus curiae.

Before Sanborn and Stone, Circuit Judges, and Munger, District Judge.

Sanborn, Circuit Judge, delivered the opinion of the Court.

This is an appeal by United Leather Workers International Union, Local Lodge No. 66, an association of about six hundred union workmen of St. Louis, Missouri, and about twenty-five individual members of that association, defendants below, from a final decree of the District Court which enjoined them from compelling or inducing any of the employes of the plaintiffs, Corporations of Missouri, whose places of business were in St. Louis, by threat, intimidation, force, abusive, violent or insulting language, the threat of superior
323 numbers or pickets, by assaulting, threateningly accosting, laying hands upon, by following them to their homes, or intimidating the members of their families, to leave the service of the plaintiffs or to fail or refuse to perform their duties to the latter as such employes.

The plaintiffs were five corporations of the State of Missouri, who for a long time had been and were on and prior to the tenth day of April, 1920, engaged in selling, on orders from their customers, the great majority of whom were residents

and citizens of other states than Missouri and had their places of business therein, manufacturing and shipping to such customers at their places of business, trunks, leather goods and bags, which by such orders, the customers bought and directed the plaintiffs to make and ship to them.

This suit was founded on Section 1 of the Sherman Anti-Trust Act, which reads: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal." Comp. Stat. Section 8820, Act of July 2, 1890; 26 Stat. 209, Chap. 647, Section 1.

The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means such as too many pickets, assaults, threats, and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous streams of the plaintiffs' interstate commerce, and prevent the plaitniffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants.

The ordinary course of business of parties selling, making and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to
324 make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the sellers acknowledge in writing. Thereupon such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods. Rearick vs. Pennsylvania, 203 U. S. 507, 511. The evidence was that when the defendants stopped the interstate commerce of the plaintiffs by stopping the making of the goods their customers had ordered the plaintiffs had such unfilled orders or contracts for the sale, manufacture and shipment to their customers at the latters' places of business in states other than Missouri of these respective values: Herkert & Meisel Trunk Company, $200,000.00; James A. Quirk & Company, $15,000.00; F.

A. Kolb Trunk & Case Company, $5,000.00; The Stability Leather Goods Company, $32,000.00; P. C. Murphy Company, $75,000.00; aggregating $327,000.00. The Supreme Court has declared that "Where the contract is for the sale of the article and for its delivery in another state, the transaction is one of Interstate Commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce, and not one relating only to manufacture". Addyston Pipe & Steel Co. vs. United States, 175 U. S. 211, 246. Indeed the etsablished rule is that Interstate Commerce within the meaning of that term in the Constitution and the Anti-Trust Act embraces far more than the mere sale, exchange and interstate transportation of the goods. It includes intercourse, it comprehends every contract, trade and dealing between citizens of one state and those of another which contemplates the transportation of goods, persons, or information from one state into another, and every initiatory, negotiating and intervening act of the parties to that trade or deal from the time the intercourse relating to it commences until the transportation and delivery have been completed. Butler Bros. Shoe Company vs. United States Engineering Company, 156 Fed. 1, 17, International Text Book Co. vs. Pigg, 217 U. S. 91, 107; Dahnke-Walker Milling Company vs. Bondurant, 42 Sup. Ct.
325 Rep. 106-8; United States vs. Reading Company, 226 U. S. 324, 367, 368; Hopkins vs. United States, 171 U. S. 578, 598; United States vs. Swift & Company, 122 Fed. 529, 531; Welton vs. State of Missouri, 91 U. S. 275; Caldwell vs. North Carolina, 187 U. S. 622, 629; United States vs. Tucker, 188 Fed. 741, 742; Marienelli vs. United Booking Offices of America, 227 Fed. 165; In re Sellman Heating & Plumbing Co., 204 Fed. 839, 840, 841-43; Robbins vs. Shelby Taxing District, 120 U. S. 489, 497; Globe Elevator Company vs. Andrew, 144 Fed. 881, 882. Under these authorities the contracts evidenced by the unfilled orders were contracts and transactions in interstate commerce. The acts of the customers in sending the orders were initiatory acts in contracts and in interstate commerce. The receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contract and transactions in interstate commerce, and the direct restraint, and for a time the complete prevention and thereafter the partial prevention of the taking of these steps by the unlawful means used by the de-

fendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping, or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act and brought the subject matter of, the parties to the suit, and the relief the court granted far within the jurisdiction of the federal court under the Anti-Trust act. Thus, Mr. Justice Harlan, delivering the prevailing opinion in Northern Securities Company vs. United States, 193 U. S. 197, 329, said: "In United States vs. E. C. Knight Company, 156 U. S. 1, it was held that the agreement or arrangement there involved had reference only to the manufacture or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce, it would then have been covered by the Anti-Trust Act and would have been illegal", and in Addyston Pipe & Steel Co. vs. United States, 175 U. S. 211, 242, the Supreme Court said: "When Congress has enacted a statute such as the one in question, any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery
326 of an article of interestate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national legislature and violates the statute." The execution of the combination or conspiracy of the defendants had exactly that effect. It directly operated and that operation was its patent and inevitable effect, not alone upon the manufacture, but upon the sale, transportation and delivery of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce.

Moreover, the evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make and deliver from the State of Missouri into other states where their customers received them. The evidence shows that the great body of the goods the plaintiff sold, made and delivered were sold and shipped to customers in other states than Missouri, that two of the plaintiffs sold goods of the value of $2,950,000.00 per year, and that while the exact volume of the business of the other three does not appear, it is a fair inference from the proof that the five plaintiffs were pouring into the channels of interstate commerce goods of the value of at least $2,500,000.00 per annum. This course of business determined and demonstrat-

ed that the transactions of these plaintiffs in causing and conducting these currents including the order contracts for the sale, making, transportation and delivery of the goods in other states, the selling, the manufacturing, the loading, shipping, and delivery of these goods at their destinations constituted interstate commerce. Stafford vs. Wallace, 42 Sup. St. Rep. 401, 402, 403; Dahnke-Walker Milling Company vs. Bondurant, 42 Sup. Ct. Rep. 106, 109; Lempke vs. Farmers Grain Company, 42 Sup. Ct. Rep. 244, 247; Swift & Company vs. United States, 196 U. S. 375; Eureka Pipe Line Company vs. Hallanan, 42 Sup. Ct. Rep. 101, 102, 103; United Fuel Gas Co. vs. Hallanan, 42 Sup. Ct. Rep. 105, 106. "When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current
327 thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle", Swift & Company vs. United States, 196 U. S. 398, 399, and where customers in other states order goods to be made by sellers in Missouri and shipped to them in the other states, sellers accept such orders, agree to so sell, make and ship the goods and do so, and this is a typical constantly recurring course of action, the current thus existing is a current of commerce among the states and the manufacture of the goods pursuant to the contracts is as much a part of that interstate commerce as is the contract of sale or the loading, the shipment or the delivery. "The application of the commerce clause of the constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control." Stafford vs. Wallace, 42 Sup. Ct. Rep. 403.

The rights of the plaintiffs to keep their business running, to the continuous flow of their currents of interstate commerce, were property rights which they were legally entitled to exercise. Quinlivan vs. Dihl-Overland Company, 274 Fed. 56, 66; Hitchman Coal & Coke Co. vs. Mitchell, 245 U. S. 229; King vs. Weiss & Lesh Mfg. Co., 266 Fed. 257, 260.

Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made, but one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce and their prevention of the flowing of the currents of these articles in interstate commerce was to deprive the plaintiffs of their income from the sale and deliveries of the goods and by this continuing loss
328 of income to compel the submission of the plaintiffs to their demands. Moreover, the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce, and this result was so evident and unavoidable that the defendants could not have failed to know, to purpose and to intend that this should be the result. "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result." United States vs. Patten, 226 U. S. 525, 543; Hitchman Coal & Coke Co. vs. Mitchell, 245 U. S. 229, 245, 256, 257; Addyston Pipe & Steel Co. vs. United States, 175 U. S. 211, 243; Duplex Company vs. Deering, 254 U. S. 443, 463, 467, 468. The defendants cannot be credited here with an innocent purpose or intent, and even if they could be they were guilty of combining to use and of using unlawful means, assaults, threats, too many pickets, following employes to their homes and like intimidating acts that scared the plaintiffs' employes to leave them and prevented those desiring employment from taking it. A combination or conspiracy to use unlawful means to accomplish a lawful purpose, and its execution by the use of such means, is as violative of the Act as a conspiracy to accomplish an unlawful purpose by lawful means.

It is contended that because manufacture is not commerce and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to and deliver in other states, and the prevention

of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such
329 manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate commerce, neither is buying or selling or contracting to buy or sell the goods, or loading or packing or shipping the goods, when considered by itself alone, interstate commerce, yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court.

In United Mine Workers of America, et al. vs. Coronado Coal Company, et al., 42 Sup. Ct. Rep. 570 at page 583 the Supreme Court, summing up the relation of coal mining to interstate commerce, said: "Coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred." The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce its relation to interstate commerce is governed by the same rule. If the obstruction to it is intended directly to restrain interstate commerce or if such obstruction necessarily has such a direct, material and substantial effect to restrain it, that the intent so

to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust
330 Act. The case in hand falls directly under this rule. The obstruction and prevention of the manufacture of articles which the plaintiffs had made interstate commerce contracts to make, sell and deliver, and to pour into their continuously existing currents of interstate commerce could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles and thus to deprive them of their income, nor could it have been made without their reasonably inferred intent and purpose to obtain that result.

While the law governing cases of this class is the same in all cases the conspiracies alleged, the evidence to sustain them and the results in the various cases necessarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States, and to prevent any interstate trade or commerce in the coal produced from non-union mines. Thus the court said: "The plaintiffs charge that there has been and is a continuously operating conspiracy between union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it," and it held that the plaintiffs were not entitled to recover against District No. 21 because "In a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in District No. 21 of 150,000 tons a week, 5,000 tons a week which the Bache-Denman mines in most prosperous times could not exceed, would have no appreciable effect upon the price of coal or non-union competition", 42 Sup. Ct. Rep. 570, 582, 584, and the court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation. In the case before this court now, the gravamen of the complaint is not that the defendants attempted to monopolize all interstate commerce but that the defendants conspired and were executing that conspiracy by unlawful means to prevent if possible, and to restrain as far as possible the flow
331 of the plaintiffs' existing continuous currents of interstate commerce and the performance of the interstate

commerce contracts which they had made to sell, make and deliver the articles which were the subjects of that commerce to customers in states other than Missouri.

It was not essential to the right of the plaintiffs to relief by injunction by the court below that the object or effect of the defendants' conspiracy and its execution should obstruct all interstate commerce or all interstate commerce in that class of articles with which the plaintiffs were conducting interstate commerce, or that it should increase the price of such articles throughout the country. It was sufficient that the defendants' conspiracy was with the necessarily inferred intent, and that, as unlawfully executed by them, it had the effect directly and substantially to interfere with, restrain and obstruct the large volume of interstate commerce which the plaintiffs were conducting to their irreparable injury. In the absence of the Anti-Trust Act the plaintiffs had the right to conduct this interstate commerce. Congress has imposed no restraint upon it or them. The failure of Congress to impose any restriction on this commerce was in effect a declaration by that body that this interstate commerce should be free and untrammeled. Welton vs. The State of Missouri, 91 U. S. 275, 279, 282; Brown vs. Houston, 114 U. S. 622, 631; Walling vs. Michigan, 116 U. S. 446, 455, 456.

Not satisfied that this declaration by inaction was sufficient, the Congress granted to the federal courts the power to protect the freedom of this interstate commerce by the Anti-Trust Act. That Act provides that "Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several states, or with foreign nations, is hereby declared to be illegal". In the succeeding section it denounces the monopolization of any part of trade or commerce among the states. While monopolies of interstate commerce thus fall under the ban of the Act, it denounces with equal force, clearness and particularly every combination and conspiracy which directly and unreasonably restrains,
interferes with or obstructs, although it does not mo-
332 nopolize or tend to monopolize, interstate commerce or
any class of it. Direct and substantial restraint, obstruction or destruction of interstate commerce, or of substantial parts of it, pursuant to a conspiracy or combination is as violative of the Act as a monopoly thereof.

In the Debs case, 158 U. S. 532, at page 581, Mr. Justice Brewer said: "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce

brought to this court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in in such a manner as to obstruct interstate commerce. If a state with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?" If the State of Missouri, by means of an Act of its legislature had attempted to impose the restraint and obstruction upon interstate commerce which the defendants, through their conspiracy placed upon it in this case, the federal court, upon a proper application would without doubt have prevented the success of such an endeavor. That restraint and obstruction by the defendant clearly denounced as it is by the express terms of the Anti-Trust Act is much less justifiable than it would have been if imposed by the State.

Evidence of the interstate contracts, of the plaintiffs' currents of interstate commerce, of the unlawful acts of the defendants, of the times and manners of their commission and of their direct and inevitable effect in preventing the performance of the plaintiffs' interstate commerce contracts, and in obstructing the currents of their interstate commerce fully sustained the finding by the court below of the formation and existence of the conspiracy, of its execution by unlawful means, and of its inevitable effect, and well warranted the issue of the injunction.

In Gable vs. Vonnegut Machinery Company, 274 Fed. 66, 71, 72, the complainant, the Vonnegut Machinery Company, was the agent of the defendant, the Toledo Machine & Tool Company, the manufacturing company, under a contract
333 with the plaintiff to pay the latter seven and one-half per cent on the sale of the plaintiff's production in states other than that of the Tool Company. Complainant brought suit and obtained an injunction against the Tool Company and some of its striking employes on the ground that the latter had formed and were operating a combination to prevent and which did prevent the Tool Company from manufacturing its usual production, and thereby restrained its interstate commerce and deprived complainant of its commission under its contract. The court held that the Vonnegut Company must be aligned with the Tool Company and not against it. And that court finally held that "The record before us is barren of evidence that the object of the strike was to inter-

fere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the Tool Company's plant", 274 Fed. at page 74. On the other hand, in the case at bar the evidence convinces that the obstruction of the manufacture imposed by the defendants' combination and its execution by means of their unlawful acts necessarily had such a patent, inevitable, direct and substantial effect in obstructing and preventing the plaintiffs' interstate commerce, that their intent to stop it, and if they could not stop it to restrain it as much as possible, must be reasonably inferred.

Counsel for the defendants cite Crescent Oil Company vs. State of Mississippi, 42 Sup Ct. Rep. 42, which did not arise under the Anti-Trust Act but involved the question whether a cotton gin operating in Mississippi and ginning cotton which the owner of the gin had bought and caused to be shipped to it from another state was an instrumentality of interstate commerce in such a sense as to withdraw it from the regulatory power of the state; Hammer vs. Dagenhart, 247 U. S. 251, 268, which involved the constitutionality of the Act of Congress to regulate the transportation in interstate commerce of articles produced by child labor; Capital Dairy Company vs. Ohio, 183 U. S. 238, which questioned the constitutionality of the legislation of Ohio relating to oleomargarine; Diamond Glue Co. vs. United States Glue Co., 187 U. S. 611, wherein the constitutionality, as against contracts made before its passage, of an act of the State of Wisconsin requiring corporations incorporated elsewhere to file copies of their charters, to pay small fees, and to meet certain other require-
334 ments as a condition of doing business in that state, was involved, and other authorities less relevant including those adjudging the time when articles flowing in the currents of interstate commerce make their entrance and exit from it and determining the line of demarcation between the exclusive power of the United States under the commerce clause of the constitution and the police and regulatory powers of the states. In the opinions in many of these cases cursory remarks may be found about the relation of manufacture to interstate commerce and to commerce but they fall under the familiar rule that the authority of expressions and statements in the opinion of courts is always limited to the specific question which they were considering and deciding when they were used. Cohens vs. Virginia, 6 Wheat, 264, 399; United States vs. Wong Kim Ark, 169 U. S. 649; 679; Traer vs. Fowler, 144 Fed. 810, 817.

On the other hand the Supreme Court has repeatedly sustained suits in equity under the Anti-Trust Act to enjoin the operation of combinations to restrain or obstruct interstate commerce by restraining or obstructing manufacture that constituted a part of or a step in such commerce. Addyston Pipe & Steel Co. vs. United States, 175 U. S. 212, 240, 241, 246; Montague & Company vs. Lowry, 193 U. S. 38, 45; American Column & Lumber Co. vs. United States, 42 Sup. Ct. Rep. 114. In Pennsylvania Sugar Refining Co. vs. American Sugar Refining Co., 166 Fed. 254, 256, 258, 259, the plaintiff corporation which had been engaged in importing raw sugar into Pennsylvania, there manufacturing it into refined sugar, selling and shipping it to customers in other states and countries, had ceased to do business during the Spanish War. That corporation, after consideration, formed the intention of engaging in business of that character again. The defendant corporation which was engaged in the same class of business conspired with one Segal, who held a majority of the stock of the plaintiff, to prevent the latter from again commencing the business contemplated, by making a large loan to Segal, taking his stock and the authority to vote it as security for the payment of the loan, and by the exercise of this voting power prevented the plaintiff from again commencing its business of manufacturing and selling refined sugar in interstate commerce. The plaintiff's action was for treble damages under the seventh section of the Anti-Trust Act. U. S. Comp. Stat. Sec-
335 tion 8829. The first defense was that the conspiracy charged related to manufacture and was consequently exempt from the prohibition of the Anti-Trust Act, and United States vs. E. C. Knight, was cited, 156 U. S. 1. But the Circuit Court of Appeals of the Second Circuit held that the conspiracy was not violative of the Act in the Knight case only because it did not directly restrain interstate commerce but that the alleged conspiracy in the Pennsylvania Refining Company's case to prevent the latter from manufacturing, selling and shipping refined sugar at all naturally, directly and inevitably restrained interstate commerce and entitled the plaintiff to relief under the Anti-Trust Act.

When the combination or conspiracy of the defendants in this case was formed and when its execution commenced by the strike, by the withdrawal at one time of nearly all the plaintiffs' workmen, the quick picketing with too many pickets of their plants, and the complete stoppage of their manufacture for the time being, the plaintiffs had made unfilled interstate commerce contracts, to sell, make and ship to their customers in other states, goods of the value of more than $300,000.00

They had existing continuously flowing currents of interstate commerce from Missouri to other states in the nation which carried their goods of the value of more than $2,500,000.00 per annum. In the execution of their combination, by too many pickets, by intimidation by numbers, by threats by following to their homes, and by other unlawful and violent acts the defendants scared many of the plaintiffs' remaining employes into withdrawing from their employment, and deterred those who wished to work for the plaintiffs from taking employment to such an extent that until they were restrained by the preliminary order of the court below they prevented the making of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce and stopped the flow of the plaintiffs' currents thereof. And after the restraining order was issued they continued the execution of their conspiracy and their unlawful acts to such an extent that they continued to obstruct and restrain to a very large and damaging extent the amount of the plaintiffs' manufacturing and of their interstate commerce so that but a small per cent of their normal currents of interstate commerce could flow. The necessary and inevitable effect of this prevention and restriction
336 of the making of the articles the plaintiffs had contracted to make, sell and deliver, was to prevent for a time and drastically restrain their interstate commerce. The defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands could not have been unaccompanied with their intent and purpose to prevent, if possible, and if not, to restrict their interstate commerce and thus to stop or diminish their income, for only by such stoppage or diminution would the stoppage or restriction of manufacturing inflict the compelling injury they sought to impose. The defendants are estopped from denying the necessary direct inevitable effect of their acts. The prevention for a time and the subsequent restriction of the intermediate step of manufacturing the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce necessarily had such a direct, material, substantial and inevitable effect to restrain the interstate commerce of the plaintiffs that the defendants' purpose and intent so to do must be reasonably inferred, both as a matter of fact and as a matter of law; as a matter of fact because the evidence produces an abiding conviction that such was the intent and purpose of the defendants, and as a matter of law because they are estopped from denying that they had the intent and purpose to produce the direct, natural, necessary and

inevitable consequences of their acts. The decree below must accordingly be and it is

Affirmed.

Reference is made to the opinion of this court in Silverstein vs. Local No. 280, of the Journeymen Tailors' Union, et al., which is filed herewith.

Filed October 19, 1922.

Stone, Circuit Judge, dissenting.

This is an appeal by a labor organization, certain officials and members thereof from a final decree of injunction.

Appellants contest the jurisdiction of the court as a federal court. There is no longer room to question the applicability of the Sherman Act, within the limits of the Clayton
337 Act, to labor organizations and strikes. But the Sherman Act relates solely to interstate commerce and the contention made here is that this conspiracy has no legal connection with interstate commerce. The facts necessary bearing on this jurisdictional question are as follows: Appellees are trunk manufacturers. A part of their products are shipped in interstate commerce. Appellants desired to unionize the plants of appellees. If peaceful means failed they designed to call a strike and so picket the plants as to prevent their operation until the appellees would submit to unionizing the plants. In pursuance of this plan, strikes were called and picketing put in operation. The evidence substantially shows that this picketing was conducted in an unlawful manner. No attempt was made to prevent appellee from shipping any manufactured products or from receiving any raw material. There was no boycott of appellees products or customers, no interference with interstate transportation, no purpose to interfere with such commerce. The conspiracy was confined to preventing manufacture. The purpose of the conspiracy was to accomplish unionization by preventing manufacture and in no way included as an object preventing appellees, by boycott or otherwise, from purchasing, selling, sending or receiving products or materials. The jurisdictional question turns, therefore, on the point of whether a conspiracy for the sole purpose of unionizing a manufacturing plant, is a restraint of interstate commerce because some of the articles which are prevented from being made are intended for interstate commerce and would normally enter therein.

My associates deem this situation reveals a conspiracy to interfere with interstate commerce, within the meaning of the Sherman Act. The points they make in their able opinion are (1) that the manufacture of articles contracted, intended or normally going into interstate commerce, constitutes a part of interstate commerce; (2) that where the purpose of the conspiracy is to prevent the manufacture of such articles, the inevitable effect is to interfere with interstate commerce, therefore, an intent to so interfere must be inferred and the conspirators be estopped from denying that such was the
338 actual intent; (3) that the means of executing the conspiracy were unlawful. I cannot concur in these views or the conclusion reached, because I think controlling decisions of the United States Supreme Court are to the contrary.

As to the contention that because an article is contracted for, intended for or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon the argument that if the manufacture is prevented, the article cannot enter interstate commerce and therefore, manufacture is an "intermediate step" in and an integral part of such commerce. This is patently true as a result of logical reasoning, but is it true when the problem before the court is to define that somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation? Such a problem must be solved along "practical" as well as logical lines. As said, in Diamond Glue Co. vs. U. S. Glue Co., (187 U. S. 611 at 616), "In modern societies every part is related so organically to every other, that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made. See further, Kidd vs. Pearson, 128 U. S. 1, 21; Coe vs. Errol, 116 U. S. 517, 525, 527; Treadway vs. Reily, 32 Nebraska, 495".

If this were otherwise, as said, in Hammer vs. Dagenhart, (247 U. S. 251 at 272), "all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to reguate commerce among the states. Kidd vs. Pearson, 128 U. S. 1, 21".

In both of the preceding quotations, citation is made of Kidd vs. Pearson, 128 U. S. 1, 21. The reasoning contained in that citation, approved in these later cases, as set out on page 21 of that opinion, is as follows:

339 "If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufacturers, but also agriculture, horticulture, stock raising, domestic fisheries, mining —in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be, local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

"It was said by Chief Justice Marshall, that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several States was to insure uniformity of regulation against conflicting and discriminating state legislation. See also County of Mobile vs. Kimball, supra, at page 697.

"This being true, how can it further that object so to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at a sacrifice of the peculiar advantages of a large part of the localities

in it, if not of every one of them. On the other hand,
340 any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the State; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the state governments, and more provocative of conflicts between the general government and the States, and less likely to have been what the framers of the constitution intended, it would be difficult to imagine."

In applying this rule of practical logic to the question of whether or not manufacture of an article of interstate commerce is, as such, a part of interstate commerce, I find, as it seems to me, a long unbroken line of decisions to the effect that it is not. These decisions, many in number, began in 1885 with Coe vs. Errol, 116 U. S. 517, and came down to June, 1922, with the noted case of The United Mine Workers of America vs. The Coronado Coal Co.

From these cases I will select a few quotations which, in my judgment, sustain the view that manufacture of articles to be shipped in interstate commerce, is not a part of interstate commerce within the meaning of the Constitution, as construed by the Supreme Court. I am impelled to do so by my high regard for the ability and learning of the judges with whom I feel compelled to differ in this case. I shall endeavor, carefully, to choose, and italicize in part, extracts which were not merely vagrant expressions of the court but such as were made directly applicable to determination of the issues there involved.

341 In the United Mine Workers case, supra, (decided June 5, 1922), this court was reversed for holding that mining coal was interstate commerce. The facts and issues in that

case seem to me directly controlling here. There was a strike the purpose of which was to unionize the mines in a certain locality. Here the strike was to unionize certain trunk factories, all of which were located in St. Louis, Missouri. Unlawful means were there, as here, used to carry on the strike—the only difference being that in that case such means went to the further extent of murder, riot and arson. In that case, Chief Justice Taft, for the court, said:

"Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer vs. Dagenhart, 247 U. S. 251, 272, we said 'The making of good and the mining of coal are not interstate commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. vs. Yurkonis, 238 U. S. 439'. Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

In Lenke vs. Farmers Grain Co., (decided Feb. 27, 1922), the court said:

"Nor is this conclusion opposed by cases decided in this court relied upon by appellants, in which we have had occasion to define the line between state and federal authority under facts presented which required a definition of interstate commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here."

In Crescent Cotton Oil Co. vs. Mississippi (decided Nov. 14, 1921), the Supreme Court considered the question of whether the Anti-Gin Act of Mississippi interferred with interstate commerce. On that point the court said:

342 "It is clear that these decisions cannot be of aid in determining the question we are now considering, which is whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the state, for its use in another state, all of the cottonseed which may be purchased in connection with its ginning operations."

"The separation of the seed from the fibre of the cotton which is accomplished by the use of the cotton gin, is a short, but important, step in the manufacture of both the seed and the fibre into useful articles of commerce; but that manufacture is not commerce was held in Kidd vs. Pearson, 128 U. S. 1, 20, 21; United States vs. E. C. Knight, 156 U. S. 1, 12, 13; Capital City Dairy Company vs. Ohio ex rel Attorney General, 183 U. S. 238, 245; McCluskey vs. Marysville & Northern Railway Company, 243 U. S. 36, 38, and in Hammer vs. Dagenhart, 247 U. S. 251, 252; Arkadelphia Milling Company vs. St. Louis & South Western Railway Company, 249 U. S. 134, 151, 152. And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce. Coe vs. Erroll, supra, and New York Central, Etc. Company vs. Mohney, 252 U. S. 152, 155. When the ginning is completed, the operator of the gin is free to purchase the seed or not, and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that State, or to ship it out of the State for use in another, and, under the cases cited, it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the State into interstate commerce and under the national power.

"The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede, but are not a part of interstate commerce, renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

343 In Hammer vs. Dagenhart, 247 U. S. 251 at page 272, the court said:

"When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

"Commerce 'consists of intercourse and traffic * * * * and includes the transportations of persons and property, as well as the purchase, sale and exchange of commodities'. The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. vs. Yurkonis, 238 U. S. 439.

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

" 'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state'. (Mr. Justice Jackson in In re Green, 52 Fed. Rep. 113.) This principle has been recognized often in this court. Coe vs. Errol, 116 U. S. 517; Bacon vs. Illinois, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. Kidd vs. Pearson, 128 U. S. 1, 21."

In Kidd vs. Pearson, 128 U. S. 1, at 20, the court said:

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacturers and commerce. Manufacture is transformation—the fashioning of raw materials
344 into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in County of Mobile vs. Kimball, 102 U. S. 691, 702, is as follows: 'Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock arising, domestic fisheries, mining —in short, every branch of human industry. For if

there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be, local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

In Capital City Dairy Co. vs. Ohio, 183 U. S. 238, at 245, the court said:

"The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All the acts of the corporation which were complained of related to oleomargarine manufactured by it
345 in the State of Ohio, in violation of the laws of that State, and therefore operated on the corporation within the State and affected the product manufactured by it before it had become a subject of interstate commerce. Kidd vs. Pearson, 128 U. S. 1; United States vs. E. C. Knight Co., 156 U. S. 1. It results that the plaintiff in error is not in a position to assail the validity of the statutes, because of their supposed operation upon interstate commerce, and we are not called upon to express an opinion respecting the constitutionality of the statutes upon this assumption."

The cases from which the above quotations are taken, as well as the many other similar decisions cited in those cases, establish the doctrine that the manufacture of goods, which are to be later transported in interstate commerce is not a part of interstate commerce.

As to the second point in the majority opinion, to-wit, the intent to interfere with interstate commerce. It is undoubtedly the law that a conspiracy formed with the specific intent to interfere with (usually by restriction of) interstate commerce is within the domain of national control and subject to the Sherman Act. This is true irrespective of the means employed toward its execution. Because this is so, there are cases in which the Act has been held applicable where the

means happened to be control of or prevention of production of the particular article of interstate commerce. Such are American Column & Lumber Co. vs. U. S. (decided Dec. 19, 1921); U. S. vs. Reading Co., 226 U. S. 324. But, in that character of cases, it was not the means employed to effectuate the conspiracy that brought it within the federal control. It was the specific, actually existing unlawful intent and purpose of the conspiracy which had that effect.

This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing and, if possible, preventing complainants from manufacturing their products. This was to be brought about by preventing them procuring the neces-
346 sary labor except through employment of members of the union. But there was no specific purpose or intent to affect interstate commerce such as was alleged, for example in the United Mine Workers case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character. That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found it must be imputed, as matter of law not fact, from the circumstances that to prevent this manufacture would naturally and inevitably pervent the products thereof going into interstate commerce.

It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here again this logic and rule must be applied in a practical way. If it is not so applied, the entire police power of the States is in danger of absorption by the National government. This is true because, in our complex social and economic life, production, as well as manufacture, of all kinds of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind Constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be distinguished from those which affect it directly. The former are without, the latter are within national control. United Mine Workers vs. Coronado Coal Co., supra; U. S. vs. Patten,

226 U. S. 525; Ware and Leland vs. Mobile County, 209 U. S. 405; Hooper vs. California, 155 U. S. 648; Leloup vs. Mobile, 127 U. S. 640, and many other cases.

Whether an act, a course of conduct or a state statute affects interstate commerce incidentally or directly, within the above rule, depends upon the circumstances of each particular case. It is not shown, in this evidence, that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars worth of goods annually and that much of
347 this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in U. S. vs. Patten, 226 U. S. 525 and similar cases.

To my mind, the facts of this case are much stronger than the United Mine Workers case, supra, and there, the Supreme Court found no jurisdiction although it said: "The circumstances are such as to awaken regret that in our view of the federal jurisdiction, we cannot affirm the judgment."

The consequences of a legal rule are often useful in testing its accuracy. There can be no shadow of doubt as to the consequences of the rule laid down in the majority opinion. The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce. Moreover, if this be true as to the products produced in such industry or factory, it is entirely logical the same rule should apply to the raw materials used in such production if any of them are subjects of interstate commerce. In a practical sense, this would result in all strikes being subject to federal jurisdiction, because scarcely any factory is so small that some of its finished products do not enter into interstate commerce. And yet, the Supreme Court has, within the six months, held that a strike in a mine shipping seventy-five percentum of its coal in interstate commerce and involving many miners and much property was without the federal jurisdiction (United Mine Workers case, supra) and that

court has never departed from, but has repeatedly and recently, affirmed the doctrine, announced almost forty years ago, that manufacturing of interstate products is not interstate commerce.

348 As to the third basis of the majority opinion—that the means employed to execute this conspiracy were unlawful. Such means included intimidation and violence. The unlawful character of intimidation and violence is beyond question but that has nothing to do with the question of whether punishment therefor or prevention thereof should be in the state or in the federal courts. In the United Mine Workers case, supra, the means employed were far more vicious than here, including arson, riot and murder. Yet it was not even suggested, in that bitterly contested case, that the means employed by the strikers had anything whatever to do with the jurisdiction of the court.

For the above reasons, I find myself unable to concur in the result or reasoning of my able associates and therefore, dissent therefrom. I am further sustained by the case of Gable vs. Vonnegut Machinery Co., 274 Fed. 66, recently decided by the court of appeals for the Sixth Circuit. In that case, by far the greater part of the products manufactured, in the plants affected, went into interstate commerce and contracts were in existence for much of such future product. In discussing the scope of the Sherman and Clayton Acts, that court said (page 73):

"Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacturing is not commerce. None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interferes with the manufacture of his products which are sold generally in interstate commerce."

The court further said (page 74):

"The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the Tool Company's plant. The fact that shipment was interfered
349 with only because goods were not manufactured, merely incidentally and directly affected interstate commerce."

Filed October 19, 1922.

350 (Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1922,

Saturday, October 21, 1922.

United Leather Workers International Union, and others named as defendants in the decree of the Court below (except Edward Schilling, Henry Schmitz and Robert Worsing against whom the bill of complaint was dimmissed), Appellants,

No. 5865. vs.

Herkert and Meisel Trunk Company, a corporation, and others named as complainants in the decree of the Court below.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that Herkert and Meisel Trunk Company, a corporation, and others named as complainants in the decree of the Court below, have and recover against United Leather Workers International Union, and others named as defendants in the decree of the Court below (except Edward Schilling, Henry Schmitz and Robert Worsing, against whom the bill of complaint was dismissed), the sum of twenty dollars for their costs herein and have execution therefor.

October 21, 1922.

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351 In the United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1922.

United Leather Workers International Union, et al., Appellants,

No. 5865. vs.

Herkert and Meisel Trunk Company, a Corporation, et al., Appellees.

Petition of Appellants for Rehearing.

Now comes defendant, Local Lodge or Union No. 66 of the United Leather Workers International Union, A. M. Reuter,

Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Col-
352 ley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk, defendants and appellants in the above-entitled cause, and believing themselves to be aggrieved by the decision of this Court in the above-entitled appeal, hereby pray that the said decision may be set aside and that a rehearing of the said appeal may be granted by the Court for the following reasons, to-wit:

(1) That the majority decision of the Court is based upon an erroneous construction of Section 1 of the Sherman Anti-Trust Act. Compiled Statutes of the United States, Section 8820, Act of July 2nd, 1890; 26 United States Statutes, Chapter 647, Section 1, and an erroneous application of the said law to the facts of this case.

(2) That the majority decision of the Court is in part erroneously based upon an argument stated to have been made in the said opinion and decision in the argument of counsel for defendants, to-wit, that the only purpose of the defendants (appellants) was to force the plaintiff to employ none but union men and to grant other demands. No such argument having been made by counsel for defendants, nor is there any evidence of any character whatever in the entire record in this case that the defendant purpose in the
353 calling of the strike was to force the plaintiffs to employ none but union men, and the assumption by the Court that the defendants had such a purpose is based upon conjecture and not upon evidence as contained in the record of this case, and therefore, unfair to the defendants. (See page 6, majority opinion.)

(3) That the majority decision of the Court was based upon the erroneous assumption that a conspiracy existed amongst the defendants (appellants) to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, there not being a particle of evidence in the entire record that the defendant entered into any agreement to com-

pel the plaintiffs to employ none but union men. Nor is there any evidence in the said record from which the existence of such an agreement for such purpose could reasonably be inferred, and the assumption of such an agreement for said purpose was unwarranted by the evidence, purely conjectural and therefore unfair to the defendants.

(4) That the majority opinion of the Court in this case is in positive and direct conflict with the decisions of the Supreme Court of the United States in the cases of Kidd vs. Pearson, 128 U. S. Reports, page 21; Coe vs. Errol, 116 United States Reports, pages 517, 525, 527; Hammer vs. Dagenhart, 247 United States Report, pages 251, 272; United Mine Workers of America vs. Coronado Coal Company, 42 Supreme Court Reports, pages 570, 583; Delaware, Lackawanna & Western R. R. Co. vs. Yurkonis, 238 United States Reports, page 439; United States vs. Patten, 226 United States Reports, page 525.

354 (5) That the majority opinion of the Court misjudged and misinterpreted the decisions of the Supreme Court of the United States as applied to the facts of this case in the cases of International Textbook Company vs. Pigg, 217 United States Reports, pages 91, 107; Dahnke-Walker Milling Company vs. Bondurant, 42 Supreme Court Reports, 106-108; United States vs. Reading Company, 226 United States Reports, page 324; United Mine Workers of America vs. Coronado Coal Company, et al., 42 Supreme Court Rep., page 570; Northern Securities Company vs. United States, 193 United States Reports, pages 197, 329; Addyston Pipe & Steel Company vs. United States, 175 United States Reports, pages 211, 243; Duplex Company vs. Deering, 254 United States Reports, 443, 463, 467, 468; Debs case, 158 U. S. Reports 532, 581.

(6) That inasmuch as averred in the bill of complaint of the plaintiffs (appellees) and as shown by the record, all of the plaintiffs are corporations of the State of Missouri, and that all the defendants (appellants) are residents of the said state, this Court in the majority opinion erred in holding that the trial court and this Court had jurisdiction of this cause and these petitioners state that neither the trial court nor this Court under the law and the facts had any jurisdiction over them.

(7) That the majority opinion of this Court was erroneous in holding that an intent to obstruct or interfere with the plaintiffs' interstate commerce could reasonably be inferred

from any acts or conduct of the defendants, and that
355 such holding is unsupported by any evidence as shown by the record in the case.

(8) That the majority opinion of this Court was erroneous in holding that the manufacture of articles of the plaintiffs, contracted or intended, or normally going into interstate commerce, constituted a part of interstate commerce, and that by reason thereof the trial court and this Court had so jurisdiction over the said defendants in this case.

(9) That the majority opinion of this Court was erroneous in holding that there was any purpose upon the part of the defendants to bring about any interference with interstate commerce as legally understood.

(10) That the majority decision of this Court is violative of the provisions of Arts. IX and X of the Constitution of the United States in that it constitutes a denial of the rights of these appellant defendants to a trial of their cause before the court of the State of Missouri, of which they are citizens, and because it is an attempt to exercise judicial powers not delegated to the United States or to its courts, but which are especially reserved to the State of Missouri and to its people by said Art. X of the Amendments to the Constitution of the United States.

(11) That the majority opinion of this Court was erroneous in this, to-wit: That although there is not even a suggestion in the entire record in this case that there was any actual intent upon the part of these defendants to affect or interfere with the interstate commerce of the plaintiffs (appellees), or any proof that the defendants (appellants)
356 knew that the plaintiffs had interstate orders to fill, or that there was any conspiracy directed to an interference with the plaintiffs' interstate commerce, yet the majority opinion of this Court held that such intent and purpose could be implied from their acts, none of these acts—assuming them to have been done or perpetrated by the defendants—having been shown to directly affect the interstate commerce of the plaintiffs.

(12) That the majority decision of this Court is calculated to absorb not only the entire police powers of the State of Missouri, but a large part of the functions of the judiciary of the said state, and thereby violates the rights of these defendants (appellants) as citizens of the said State of Missouri under Arts. X and XI of the Amendments of the Constitution of

the United States and under Section 2 of the Bill of Rights, Art. II of the Constitution of the State of Missouri.

(13) That the majority decision in this case is in conflict with the opinion of this Court in the case of Silverstein vs. Local Union No. 280 of the Journeymen Tailors' Union, filed October 19, 1922, inasmuch as practically the same state of facts apply to both cases, and considered in connection with the opinion in the former case, the majority opinion in this case is discriminative against these defendants.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

357 (Certificate of Counsel.)

I, John P. Leahy, hereby certify that I am the solicitor and of counsel for the above-named appellants and petitioners; that I personally attended the taking of all the testimony in the above-entitled cause; that I have carefully examined the record, opinion and briefs therein; that I am duly authorized by the appellants to execute and present the foregoing petition for rehearing; that I prepared said petition and believe the statements therein made to be true; that I believe this Court erred in its decision as specified in the foregoing petition and that appellants have a just and meritorious cause for rehearing.

Dated this 9th day of December, 1922.

JOHN P. LEAHY,
Solicitor and of Counsel for the Appellant Petitioners.

Subscribed and sworn to before me this 9th day of December, 1922.

My term expires February 22, 1926.

(Seal) HARRIET COX,
Notary Public.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 12, 1922.

358 (Order denying Petition for Rehearing.)

December Term, 1922,

Saturday, December 23, 1922.

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellants.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

December 23, 1922.

(Motion of Appellants to Stay Mandate.)

Come now the appellants in the above entitled cause, by their counsel, and respectfully represent to this Honorable Court, as follows:

That they desire and intend under the advice of their said counsel to that effect, to file a petition in the Supreme Court of the United States for a Writ of Certiorari to review the judgment rendered by this Court in the said cause.

Wherefore, the said appellants by their counsel, as aforesaid, move and pray this Honorable Court that the issuing of the mandate by this Court in this cause may be stayed, for such time as the Court shall deem necesary and which your petitioners respectfully suggest, owing to the crowded docket of attorneys for appellants, should be at least sixty days, to enable the appellants' said counsel to prepare, present and submit to the Supreme Court a petition for such writ accordingly.

JOHN P. LEAHY,
LENA FRANK,
Attorneys for Appellants.

359 (Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 29, 1922.

(Order staying issuance of Mandate.)

December Term, 1922.

Monday, January 8, 1923.

Upon consideration of the motion of appellants for an order staying the issuance of the mandate in this case for a period of

sixty days to enable counsel to prepare, present and submit to the Supreme Court of the United States a petition for writ of certiorari, It is now here ordered that the issuance of the mandate of this Court be, and the same is hereby, stayed for a period of Sixty days from and after this date, unless said petition for writ of certiorari shall have been sooner disposed of.

January 8, 1923.

(Petition of Appellants for Appeal to Supreme Court, U. S.)

Now comes defendant, Local Lodge or Union No. 66 of the United Leather Workers International Union, A. M. Reuter, Al Berkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Ester Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robert Ginner, Tom Caito, Frank
360 Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robert Worsing, Steve Zoeler, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk, appellants in the above entitled cause (defendants in the trial court) by their attorney John P. Leahy, and feeling themselves aggrieved by the final judgment and opinion of this Court entered against them in favor of the appellees (plaintiffs in the trial court) wherein and whereby the final decree of the District Court of the United States for the Eastern Division of the Eastern Judicial District of the State of Missouri was affirmed by this Court, hereby pray that an appeal may be allowed to them from the said judgment and opinion of this Court to the Supreme Court of the United States, and in connection with this petition, the petitioners hereby present their assignment of errors.

And in connection with this petition for appeal, your petitioners further state and show that the decree and judgment of the Circuit Court of Appeals for the Eighth Circuit is not made final by the statutes of the United States in such cases made and provided, and that the matter in controversy exceeds the sum of One Thousand Dollars ($1000.00) besides costs as fully appears on the face of the record in the said cause.

Wherefore, your petitioners further pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, Dist. of Columbia, under the rules of such Court made and provided.

Your petitioners further pray that the proper order relating to the required security for costs required of them be made in this cause.

Your petitioners further pray that an order may be
361 entered pending the final disposition of this matter, and that the amount of the security for the costs may be fixed by the order allowing the appeal.

JOHN P. LEAHY,
Solicitor for Appellants.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 5, 1923.

(Assignment of Errors on Appeal to Supreme Court, U. S.)

Now comes defendant, Local Lodge or Union No. 66 of the United Leather Workers International Union, A. M. Reuter, Al Berkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Ester Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Diekchorner, Joe Kuhn, Wm. Balmer, Robert Cinner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robert Worsing, Steve Zoeler, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk, appellants in the above entitled cause (defendants in the trial court) by their solicitor John P. Leahy, and in connection with the petition for appeal say that in the record and proceedings and in the final record of the trial court, manifest error has intervened to the prejudice of the appellants, to-wit:—

First: The United States Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of

the Eastern Division of the Eastern Judicial District of Missouri.

362 Second: The United States Circuit Court of Appeals for the Eighth Circuit erred in denying the motion of appellants for the rehearing of said cause.

Third: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding, holding and decreeing that the plaintiffs herein were entitled to the injunction granted to them by the said Court enjoining and restraining the defendants:—

(a) From compelling or inducing, by threat, intimidation, force or abusive or violent or insulting language, or by force of numbers, any of the employees of any of the complainants to leave such service, or to fail or refuse to perform their duties as such employees; and from compelling or attempting to compel patrons or intending patrons of said complainants not to patronize or deal with said complainants or any of them.

(b) From interfering, by threat or violence or intimidation or violent or abusive language or by force of numbers, with persons seeking to make deliveries of goods or products to the places of business of any of said complainants, or hauling or taking merchandise therefrom.

(c) From interfering by force or violence with any of the employees of any of said complainants for the purpose of compelling them, or any of them, to leave such employment.

(d) From obstructing the entrances or the streets, alleys, approaches or premises adjacent to the places of business of any of the said complainants, or entering the said places of business, for the purpose of interfering with or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, force of numbers, violent or abusive langauge any of the employees of any of said complain-
363 ants to refuse or fail to perform their duties as such.

(e) From picketing in front of the place of business of any of said complainants, or in the immediate vicinity thereof, for the purpose of interfering with or hindering or obstructing such business, or for the purpose of compelling or inducing, by threats, intimidation, violence or abusive language or abusive persuasions any of the employees of any of said complainants to refuse or fail to perform their duties as such.

(f) From trespassing upon or going upon the premises or place of business of any of said complainants for the purpose of interfering with the contracts of employment between such complainant and its employees, or for the purpose of inducing such employees to fail or refuse to perform their duties as such.

(g) From assaulting, laying hands on or following any of the employees of any of said complainants, when going to or leaving any of the places of business of any of said complainants, and from calling at the homes or places of residence of such employees, for the purpose by threats, violence, intimidation, or force of numbers, or vile or insulting and threatening language, directed against such employees or members of their families, of compelling or inducing such employees to fail or refuse to perform their duties as such.

Fourth: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of United States for the Eastern Division of the Eastern Judicial District of Missouri erred in finding, holding and decreeing that the plaintiffs were entitled to a decree, as hereinbefore specifically mentioned.

364 Fifth: The United States Circuit Court of Appeals for the Eighth Circuit erred in declaring and refusing to reverse the final judgment and decree of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and in declaring and refusing to remand this cause to the said Court with directions to enter a decree for the appellants (defendants in the trial court) dismissing complainants bill.

Sixth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in this, to-wit, that its said decision was based upon an erroneous construction of Section 1 of the Sherman Anti-Trust Act, Compiled Statutes of the United States, Section 8820, Act of July 2nd, 1890; 26 United States Statutes, Chapter 647, Section I, and an erroneous application of the said law to the facts of this case.

Seventh: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in this, to-wit, that the said majority opinion is in part erroneously based upon an argument stated to have been made by counsel for defendants (appellants), that the only purpose of the defendants (appellants) was to force the plaintiffs to employ none but union men and to grant other demands. No such ar-

gument having been made by counsel for defendants, nor is there any evidence of any character whatever in the entire record in this case that the defendant purpose in the calling of the strike was to force the plaintiffs to employ none but union men, and the assumption by the Court that the defendants had such a purpose is based upon conjecture and not upon evidence as contained in the record of this case, and therefore, unfair to the defendants. (See page 6, majority opinion)

365 Eighth: That the United States Circuit Court of Appeals for the Eighth Circuit in the majority opinion of the said Court erred in this, to-wit, that the said opinion was based upon the erroneous assumption that a conspiracy existed among the defendants (appellants) to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, there not being a particle of evidence in the entire record that the defendants entered into any agreement to comply the plaintiffs to employ none but union men. Nor is there any evidence in the said record from which the existence of such an agreement for such purpose could reasonably be inferred, and the assumption of such an agreement for said purpose was unwarranted by the evidence, purely conjectural and therefore unfair to the defendants.

Ninth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in this, to-wit, that the said majority opinion is in positive and direct conflict with the decisions of the Supreme Court of the United States in the cases of Kidd vs. Pearson, 128 U. S. Reports, page 21; Coe vs. Errol, 116 United States Reports, pages 517, 525, 527; Hammer vs. Dagenhart, 247 U. S. Reports, pages 251, 272; United Mine Workers of America vs. Coronado Coal Company, 42 Supreme Court Rep., pages 570, 583; Delaware, Lackawanna & Western R. R. Co. vs. Yarkonis 238 U. S. Reports, pages 439; United States vs. Patten, 226 U. S. Reports, page 525.

Tenth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in this, to-wit, that it misjudged and misinterpreted the decisions of the Supreme Court of the United States as applied to the facts of this case in the cases of International Text-book Company vs. Pigg, 217 U. S. Reports, pages 91, 107; Dahnke-Walker Milling Company vs. Bondurant, 42 Supreme Courts Rep.
366 pages 324; United Mine Workers of America vs. Coronado Coal Company, et al., 42 Supreme Court Reports, page 570; Northern Securities Company vs. United States, 193 U. S. Reports, pages 197, 329; Addyston Pipe & Steel

Company vs. United States, 175 U. S. Reports, pages 211, 243; Duplex Company vs. Deering, 254 U. S. Reports, 443, 463, 467, 468; Debs case, 158 U. S. Reports, 532, 581.

Eleventh: That the United States Circuit Court of Appeals for the Eighth Circuit and in the majority opinion of the said Court erred in this, to-wit, that inasmuch as averred in the bill of complaint of the plaintiffs (appellees) and as proven by the evidence in the case, all of the plaintiffs are corporations of the State of Missouri, and that all the defendants (appellants) are and were residents of the said state, and inasmuch as there had been no proof of any direct interference with the interstate commerce of the plaintiff or any direct intent upon the part of the said defendants by conspiracy or otherwise to interfere with the said interstate commerce of the plaintiffs, in holding nevertheless that the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri and the United States Circuit Court of Appeals for the Eighth Circuit had jurisdiction of this case and over the defendants (appellants) herein, where under the law, neither of said courts had such jurisdiction.

Twelfth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in holding that an intent to obstruct or interfere with the plaintiffs' interstate commerce could be reasonably inferred from any acts or conduct of the defendants, and that such holding is unsupported by any evidence as shown by the record in this case.

367 Thirteenth: That the United States Circuit Court of Appeals for the Eighth Circuit in the its majority opinion erred in holding that the manufacture of articles of the plaintiffs, contracted or intended, or normally going into interstate commerce, constituted a part of interstate commerce, and that by reason thereof the trial court, to-wit, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and this Court had no jurisdiction over the said defendants in this case.

Fourteenth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in holding that there was any purpose upon the part of the defendants to bring about any interference with interstate commerce of the plaintiffs, there being no evidence in this case upon which to base such holding.

Fifteenth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in this, to-

wit, that the said majority opinion is violative of the provisions of Arts. IX and X of the Constitution of the United States in that it constitutes a denial of the rights of these appellants to a trial of their cause before the courts of the state of Missouri, of which they are citizens, and because it is an attempt to exercise judicial powers not delegated to the United States or to its courts, but which are especially reserved to the State of Missouri and to its people by said Art. X of the amendments to the Constitution of the United States.

Sixteenth: That the United States Circuit Court of Appeals for the Eighth Circuit and in the majority opinion of the said court erred in this, to-wit, that although there is not even a suggestion in the entire record in this case that there
368 was any actual intent upon the part of these defendants to affect or interfere with the interstate commerce of the plaintiffs (appellees) or any proof that the defendants (appellants) knew that the plaintiffs had interstate orders to fill, or that there was any conspiracy directed to an interference with the plaintiffs' interstate commerce, yet the majority opinion of this Court held that such intent and purpose could be implied from their acts, none of these acts—assuming them to have been done or perpetrated by the appellants—having been shown to directly affect the interstate commerce of the plaintiffs.

Seventeenth: That the United States Circuit Court of Appeals for the Eighth Circuit and in its majority opinion erred in the said opinion in this, to-wit, that while conceding that there was no direct proof of a conspiracy on the part of the defendants to obstruct the interstate commerce of the plaintiffs, or of any attempt upon the part of the said defendants to obstruct the said interstate commerce, nevertheless affirmed the judgment and opinion of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in holding that both the said courts had jurisdiction over the defendants and that such holding and judgment is calculated to illegally absorb not only the entire police powers of the State of Missouri, but a large part of the functions of the judiciary of the said State, and thereby violates the rights of these defendants (appellants) as citizens of the said State of Missouri under Arts. X and XI of the Amendments of the Constitution of the United States and under Section 2 of the Bill of Rights, Art. II of the Constitution of the State of Missouri.

Eighteenth: That the United States Circuit Court of Appeals for the Eighth Circuit in its majority opinion erred in this, to-wit, that the said majority opinion is in con-
369 flict with the opinion of the United States Circuit Court of Appeals for the Eighth Circuit in the case of Silverstein vs. Local Union No. 280 of the Journeymen Tailors' Union, filed October 19, 1922, inasmuch as practically the same state of facts apply to both cases, and considered in connection with the opinion in the former case, the majority opinion in this case is discriminative against these defendants.

Nineteenth: That the United States Circuit Court of Appeals for the Eighth Circuit erred in affirming and refusing to reverse the judgment of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, overruling the defendant's motion to dismiss the complainants' bill of complaint offered at the close of all the evidence in the case.

Twentieth: That the United States Circuit Court of Appeals for the Eighth Circuit erred in affirming and refusing to reverse the judgment of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in decreeing that the temporary injunction theretofore granted in this case be made permanent.

Twenty-first: That the United States Circuit Court of Appeals for the Eighth Circuit in the majority opinion of the said Court erred in—as the basis of its said majority opinion—its declaration, "that the complaint of the decree rendered by the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri is that the evidence on which the said decree was rendered was insufficient to sustain it because, although it conclusively estab-
lished the fact that the defendants conspired to and
370 did by unlawful means, such as too many pickets, assaults, threats and intimidation of employees and those seeking employment of the plaintiffs, restrained and stopped the theretofore continuous streams of the plaintiffs' interstate commerce, and prevented the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce, and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to

comply with other demands of the defendants", for that reason, that these defendants (appellants) never made such admissions or contentions or arguments as the basis of their complaint of the decree rendered against them by the said United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, but expressly denied that the defendants had ever conspired with themselves or other persons, used unlawful means, or too many pickets, assaults, threats and intimidation of employees or those seeking employment of the plaintiffs, but did contend—as they had the legal right to do—that neither the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri nor the United States Circuit Court of Appeals for the Eighth Circuit had any jurisdiction over the said defendants in the said case by reason of the fact that the plaintiffs therein failed to show that there was either a conspiracy existing and organized between the defendants or between the defendants or other persons to obstruct the interstate commerce of the plaintiffs, nor was any such obstruction ever proven against the defendants in the evidence in the case.

Wherefore, appellants pray that the said opinion and judgment of the United States Circuit Court of Appeals
371 for the Eighth Circuit may be reversed and that this case may be ordered remanded with directions to enter a decree for appellants (defendants below) dismissing the complainant's bill.

JOHN P. LEAHY,
Solicitor for Appellants.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 5, 1923.

(Order allowing appeal to Supreme Court, U. S., and fixing amount of bond on appeal.)

On motion of John P. Leahy, solicitor and counsel for above named appellants (defendants in the trial court) it is hereby ordered that an appeal to the Supreme Court of the United States from the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit herein, affirming the final judgment and decree of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and the same is herewith allowed and a certified transcript of the record, testimony, exhibits, stipu-

lation and all proceedings be forthwith transmitted to the said Supreme Court of the United States.

And it is further ordered that the bond on appeal be and the same is fixed at the sum of Five Hundred Dollars, being for the costs on appeal.

February 5, 1923.

WALTER H. SANBORN,
Judge of the Circuit Court of Appeals in and for the Eighth Circuit.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 5, 1923.

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372 (Bond on Appeal to Supreme Court, U. S., with approval of Judge.)

Know All Men By These Presents, that we, the United Leather Workers International Union. Local Lodge or Union No. 66; A. M. Reuter, Al Berkenmeier, H. Ehlenbeck, Charles Kaysing, Michael Little, John Lechner, Charles Morgan, Paul Berry, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Ester Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stoecker, Sylvester Schnitz, Gus Nenninger and George Wenk, as principals, and The National Surety Company of New York City, N. Y. as surety are held and firmly bound unto the Herkert & Meisel Trunk Company, P. C. Murphy Trunk Company, James A. Quirk Trunk Company and Stability Leather Goods Manufacturing Company and H. A. Kolb Trunk & Case Company in the sum of Five Hundred ($500.00) Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators by these presents.

Sealed with our seals and dated this 6th day of February 1923.

Whereas, the above named principals have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment and opinion of the United States Circuit Court of Appeals for the Eighth Circuit affirming the final judgment and decree of the United States District Court
373 for the Eastern Division of the Eastern Judicial District of Missouri in the above entitled cause:

Now therefore, the condition of this obligation is such that if the above named principals shall prosecute their said appeal to effect and answer all costs if they fail to make their appeal, then this obligation shall be void; otherwise to remain in full force and effect.

In Witness Whereof, we have hereunto set our hands the day and year last above written.

Local Union No. 66 United Leather Workers International Union,

Al. Berkenmeier,
Chas. Kaysing,
John Lechner,
Paul Berry,
Stephen Wilhelm,
Ester Bradley,
Malley Collie,
Thomas Halliburton,
John Remstedt,
Henry Schnitz,
Theo Summers,
Fred Tentschert,
Walter Webber,
Hermen Dieckhorner,
Wm. Balmer,
Tom Caito,
Rudolph Koob,
Leo Pauley,
Robt. Worsing,
Annie Stecker,
Gus Nenninger,
Geo. Wenk,
A. M. Reuter,
H. Elenbeck,
Michael Little,
Chas. Morgan,
Ambrose Kintz,
Walter Deschant,
Nora Wieland,
Walter Fleher,
J. Perry,
Charles Reuben,
Benjamin Schnitz,
Charles Tadesco,
Ray Watke,
John Zimmerman,
Joe Kuhn,
Robert Ginner,
Frank Caito,
Anton Pauley,
Steve Zoeller,
Tony Sanson,
Sylvester Schnitz,

By Wm. Tripp,
Attorney in fact.

(Seal)

NATIONAL SURETY COMPANY,
By C. S. Fraser,
Attorney-in-fact.

374 Approved February 6, 1923,

WALTER H. SANBORN,
Senior Circuit Judge.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 6, 1923.

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375 (Citation with acceptance of Service.)

In the United States Circuit Court of Appeals
Eighth Circuit.

United Leather Workers International Union, et al., Appellants,
No. 5865. vs.
Herkert & Meisel Trunk Company, a corporation, et al., Appellees.

United States of America—ss.

To Herkert & Meisel Trunk Company, P. C. Murphy Trunk Company, James A. Quirk Trunk Company, Stability Leather Goods Manufacturing Company, and H. A. Kolb Trunk and Case Company, Appellees—Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, in the District of Columbia, on the 7th day of March, 1923, pursuant to an order allowing an appeal filed and entered in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, from a final decree signed, filed, and entered on the 21st day of October 1922, in that certain suit, being in Equity No. 5865, wherein the United Leather Workers International Union, et al. are the appellants and you are the appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said order allowing appeal mentioned, should not be corrected and why justice should not be speedily done to the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Judge of the United States Circuit Court of Appeals for the Eighth Circuit, this 5th day of February, 1923.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals, 8th Circuit.

Service of the above citation is hereby accepted this 5th day of February, 1923.

MAT J. HOLLAND,
CHAS. A. HOUTS,
Solicitors for appellees.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit, No. 5865. United Leather Workers International Union, et al., Appellants, vs. Herkert & Meisel Trunk Co., et al. Original Citation with acceptance of Service. Filed Feb. 6, 1923, E. E. Koch, Clerk.

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376 (Praecipe for Transcript on Appeal to Supreme Court, U. S.)

To the Clerk of the U. S. Circuit Court of Appeals:

In preparing the record for use on appeal to the Supreme Court of the United States in the above entitled cause, please omit the following papers therefrom, viz:

Motion of Appellants to certify Question of Jurisdiction to Supreme Court of the United States.

Form of Certificate of Questions to Supreme Court of the United States.

Memorandum of District Court on final hearing on merits.

Order denying Motion of Appellants to certify question of Jurisdiction to Supreme Court of the United States.

JOHN P. LEAHY,
Attorney for Appellants.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Feb. 7, 1923.

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377 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full,

true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the praecipe of counsel for appellants, in a certain cause in said Circuit Court of Appeals wherein the United Leather Workers International Union, et al., were Appellants, and the Herkert & Meisel Trunk Company, a corporation, et al., were Appellees, No. 5865, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed thereon is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twelfth day of February, A. D. 1923.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 29,428. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 878. United Leather Workers International Union, Local Lodge or Union No. 66, et al., appellants, vs. Herkert & Meisel Trunk Company et al. Filed February 27th, 1923. File No. 29,428.

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No. 678

FEB 27 1923

WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al.,
Petitioners,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Respondents.

No. ——

PETITION FOR WRIT OF CERTIORARI.

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JOHN P. LEAHY,
Solicitor for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al.,
Petitioners,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Respondents.

No. ——

NOTICE TO RESPONDENTS.

To the Above Named Respondents or Their Solicitors and Counsel:

Take notice, that at the opening of the Supreme Court of the United States, on Monday, March 26th, 1923 (or as soon thereafter as counsel can obtain a hearing in that behalf), a petition for a writ of certiorari in the suit of United Leather Workers International Union et al. (appellants), petitioners v.

Herkert & Meisel Trunk Company et al. (appellees), respondents, lately pending in the United States Circuit Court of Appeals for the Eighth Circuit, as No. 5965 therein, will be submitted to the Supreme Court of the United States on behalf of the said petitioners (appellants therein), and a copy of said petition is hereby served upon you.

JOHN P. LEAHY,
Solicitors for Petitioners.

Service of the above notice and copy of petition duly accepted this 20th day of February, 1923.

CHARLES A. HOUTS,
MAT J. HOLLAND,
Solicitors and Counsel for Respondents.

IN THE

SUPREME COURT OF THE UNITED STATES.

.....TERM, 1922.

United Leather Workers International Union, Local Lodge or Union No. 66; A. M. Reuter, Al Berkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk,

vs. Petitioners,

Herkert & Meisel Trunk Company, a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Company, a corporation, Stability Leather Goods Manufacturing Company, a corporation, and H. A. Kolb Trunk and Case Company, a corporation, Respondents.

No.....

PETITION FOR WRIT OF CERTIORARI.

Now comes the above-named petitioners and respectfully represent to this Honorable Court as follows, to wit:

That all the defendants named in the plaintiffs' bill of complaint, except Edward Schilling, Henry Schnitz and Robert Worsing, who were not served and did not appear in the said cause and were not included within the scope of the injunction issued by the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and Al Berkenmeier, one of the petitioners herein, were employes of the various complainants and also members of the Local Union hereinbefore mentioned.

That these defendants, with the exceptions above mentioned, had been working under contracts made by them as members of the Local Union with the appellees, which expired in April, 1921; that negotiations for renewal of the contracts were entered into by your petitioners through representatives of their said union with the herein-named respondents, which resulted in a failure to arrive at an understanding and in the withdrawal of your petitioners from the employment of the respondents and the calling of a strike by your said petitioners as members of the aforesaid union, which said strike was called in the regular way and in accordance with the rules and regulations of the said Local Union, of which your petitioners were members.

That the bill of complaint filed by the respondents in the said United States District Court for the East-

ern Division of the Eastern Judicial District of Missouri averred that the respondents (complainants in the bill) were corporations organized and existing under the laws of the State of Missouri, having their principal offices and places of business in the City of St. Louis and State of Missouri, and that the defendant United Leather Workers International Union, Local Lodge or Union No. 66, is a voluntary and unincorporated association composed of numerous persons, **all of whom resided in the City of St. Louis and State of Missouri.**

The said bill of complaint further averred that each of the complainant corporations has large numbers of customers in the various states and territories of the United States to which they had been shipping and would continue to ship in interstate commerce trunks, leather goods and other products of their factories; that they had accepted orders to ship manufactured goods to customers outside the state who would cancel their orders unless same were promptly shipped.

The complainants' said bill further averred that the defendants (petitioners herein), well knowing the facts above stated, determined that each of the complainants should enter into a contract with the local union, by which each of them would unionize its business and adopt what was commonly called the

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CARD 5

"closed-shop" policy, and would not permit any persons to work in their factories who were not members in good standing of the said local union.

The complainants' bill further averred that on the 10th day of April, 1920, the defendants, your petitioners, entered into a conspiracy with each other and with various other persons to destroy the complainants' business and to compel their employes, present and future, to leave said employment; that in furtherance of the said conspiracy, the defendants, your petitioners, inaugurated a strike against the complainants and by the use of abusive language and boisterous conduct intimidated their employes and prevented the complainants from carrying on their said interstate commerce business and interfered with and obstructed said complainants in the manufacture and shipment of the products of their various factories sold to be shipped in interstate commerce, all with the purpose of forcing the complainants to yield to the demands of the defendants.

The complainants' said bill further averred that **they represented the entire business of manufacturing trunks and leather bags in the City of St. Louis,** and that this result had been obtained by great labor and effort on the part of complainants and at great expense, and that it was absolutely impossible for the complainants to carry on their said business if

they were hindered by the "closed-shop" policy for the reason that their output would be restricted if subject to unreasonable union domination, and it would be absolutely destructive of the business of the complainants. The prayer of the bill was for an injunction, temporary and permanent.

That the answer filed by the defendants, your petitioners herein, denied specifically the allegations of the petition and further averred that the complainants in the bill of complaint, as stated in same, were corporations of the State of Missouri and that all of the defendants were residents of the said state and that, therefore, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri had acquired no jurisdiction whatever over their persons, had no lawful power to proceed with the trial thereof or to issue an injunction against them, or to grant the equitable relief sought by these complainants, and the said answer prayed for the dissolution of the restraining order theretofore granted by the said District Judge, the denial of the temporary injunction and the dismissal of the complainants' bill (pages 32-36, inclusive, printed record).

That a hearing of the said cause was had before Honorable C. B. Faris, Judge of the United States District Court of the Eastern Division of the Eastern Judicial District of Missouri, and the said Judge in his opinion, as set forth in Appendix "A," found

that the strike was called after a fruitless effort to agree upon terms, pursuant to a vote taken in the regular way; that the calling of the strike was followed by the quitting of the complainants' employment of practically all their employes; that picketing was maintained around their plants and various illegal acts were committed; **that these unlawful acts prevented the plaintiffs from employing other workers to take the place of the strikers, so that the plaintiffs were unable to manufacture the goods necessary to fill their interstate commerce orders; that there was no actual interference with or hindrance of any interstate movement or shipment of the goods made by the plaintiffs or by either of them, for the very simple reason that the goods had never come into existence, on account of the interference mentioned; that such goods as were actually made by plaintiffs were shipped in interstate commerce (when such was their destination) without let or hindrance** (Printed Rec., p. 47).

That the Court found from the acts of the pickets existence of a conspiracy amongst the defendants, but did not find that there was any conspiracy for the purpose of unionizing the complainants' shops, as set forth in the bill of complaint.

That the said District Judge was of the opinion, as expressed by him in his decision, that upon the pleadings and facts in the evidence and particularly

because the goods of the plaintiffs had not come into existence as manufactured products and were not shipped, and that there **had been no interference with the shipment of such goods as were manufactured, that there was no violation of the interstate commerce laws**, and, therefore, he **did not have jurisdiction over the defendants,** but felt himself constrained to hold the opposite view in deference to the opinion of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in the case of Dowd v. United Mine Workers et al., Circuit Court of Appeals Records, p. 495 (Printed Rec., p. 50; Orig. Rec., p. 71).

The hearing upon which the foregoing opinion was rendered by the District Judge was on the plaintiffs' application for a temporary injunction, and, thereafter, both sides having agreed to submit the cause upon the evidence adduced at this hearing, the District Court granted a permanent injunction against the defendants herein named, from which decree and judgment your petitioners (defendants) appealed to the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

Your petitioners further state that there was no proof offered by the complainants in the entire record of this cause that the defendants or either of them had interfered in any way with any of the complainants' imports or shipments in interstate commerce, but such proof of alleged illegal acts was confined to

interference with the employes of the complainants at their factories; that there was no proof whatever in the said entire record of any intent upon the part of the defendants to bring about the "closed-shop" policy charged in the bill of complaint.

That, as hereinbefore stated, your petitioners (defendants) appealed to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, and the said cause was argued and submitted to the latter court before Honorable Walter H. Sanborn, Circuit Judge of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, Honorable Kimbrough Stone, Circuit Judge, Honorable Thomas C. Munger, District Judge, and on the 21st day of October, 1922, Circuit Judge Walter H. Sanborn, speaking for the said Judge Munger, being a majority of the said court, affirmed the judgment of the Trial Court granting a permanent injunction against these defendants. A copy of the opinion of the majority of the said United States Circuit Court of Appeals for the Eighth Judicial Circuit is hereto attached and marked "Appendix B."

That a **dissenting** opinion in this cause was filed by the Honorable Kimbrough H. Stone, Judge of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, a copy of which is hereto attached, marked "Appendix C," and made part hereof.

That on the 12th day of December, 1922, your petitioners filed their petition for a rehearing of the said cause in the United States Circuit Court of Appeals for the Eighth Judicial Circuit, a copy of which is hereto attached, marked "Appendix D," and made part hereof, and on the 25th day of December, 1922, the petition of these petitioners for a rehearing of the said cause was overruled by the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

A certified copy of the entire record of the said cause in the District Court and in the United States Circuit Court of Appeals is herewith submitted as a part of this application in conformity with the rule of this Honorable Court concerning cases sought to be brought from the Circuit Court of Appeals.

Reasons Why Writ Should Be Granted.

While the record in this case will show that the strike was justifiable from every standpoint, morally and legally, and (as we contend) conducted with a due regard for peace and order and the rights of the complainants, the acts for which it was sought to hold them responsible being—except in one or two instances—committed by persons not shown to be connected in any way with the defendants.

Yet, as the question of paramount importance in this case is that of the **jurisdiction of the federal**

court over the defendants, and as your petitioners feel and believe that on the facts and the law of the case, the federal courts were not entitled to exercise jurisdiction over them, and from that standpoint, the petitioners are entitled to the writ herein prayed for, we may, therefore, very appropriately, and as briefly as possible and compatibly with its importance, confine ourselves to a discussion of this question.

Jurisdiction of the Court.

In this connection, we take leave to point out that there is no diversity of citizenship in this case, and that jurisdiction over the defendants is claimed solely because of an alleged violation of the Sherman Anti-Trust Act of July 2nd, 1890, Chapter 647, Section I, 26 Stat. (Compiled Statutes, Section 8820) which is as follows:

> "Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce amongst these several states or with foreign nations is declared to be illegal."

To bring any case therefore, wherein a violation of this act is alleged, it is essential that a combination in restraint of interstate commerce must be averred and established and its execution proved by overt

acts, before the courts of the state, in which ample remedies are provided for the violation of the rights of its citizens, can be deprived of jurisdiction, and such jurisdiction exercised solely by the federal courts.

No Proof of Intent or Conspiracy to Directly Interfere With Interstate Commerce.

A discussion of the evidence is neither appropriate nor necessary in this petition, more particularly since in the findings of the trial Judge contained in his opinion in Appendix A, as well as in the majority opinion of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, and even more expressly in the dissenting opinion of Judge Stone of the latter court, it is affirmed and declared that no conspiracy on the part of these petitioners (defendants), having for its purpose an unlawful interference with the complainants' interstate commerce, was proven against them. The following excerpt from the opinion of Judge Stone (see Appendix C; also United Leather Workers International Union v. Herkert & Meisel Trunk Company et al., Fed. Rep. 284, l. c. 463) will indicate this:

> "The record is entirely barren **even of a suggestion that there existed any actual intent to affect interstate commerce.** The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these partic-

ular plants. Of course, this was to be accomplished by curtailing, and, if possible, preventing complainants from manufacturing their products. **But there was no specific purpose or intent to affect interstate commerce,** such as was alleged, for example, in the United Mine Workers' case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character. That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found **it must be imputed as a matter of law, not fact, from the circumstances, that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce.''**

Majority Opinion of Circuit Court of Appeals Holds That Intent May Be Implied as Matter of Law.

In holding that such an intent could be implied in this case, Judge Sanborn, speaking for the majority opinion of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this case, says:

> ''It was not essential to the right of the plaintiffs to relief by injunction by the court below, that the object or effect of the defendants' conspiracy and its execution should obstruct all interstate commerce in that class of articles with

> which the plaintiffs were conducting interstate commerce. It was sufficient that the defendants' conspiracy was with the **necessarily inferred intent** and that, as unlawfully executed by them, **it had the effect** directly and substantially to interfere with, restrain and obstruct the large volume of interstate commerce, which the plaintiffs were conducting to their irreparable injury."

This ruling of the majority of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, as we respectfully submit to this Court, ignores the burden cast upon the respondents (complainants) to establish a prima facie case against the defendants substitutes conjecture for requisite evidential facts, carries interstate authority into the dominion of pure state control to such an extent that hardly a vestige of such state control remains and the disastrous consequences which would follow from its adoption as a settled principle of law is pointed out with the most vigorous and striking emphasis by Circuit Judge Stone in his dissenting opinion, which we again quote (see Appendix C, also United Leather Workers International Union v. Herkert & Meisel Trunk Company et al., Fed. Rep. 284, l. c. 464):

> "It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here, again, this logic and rule must be applied in a practical way. If it is not so

applied, the **entire police powers of the states is in danger of absorption by the national government.** This is true because, in our complex social and economic life, production, as well as manufacture, of all kind of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be **distinguished from those which affect it directly.** The former are without, the latter are within, national control." (Citing United Mine Workers v. Coronado Coal Co., supra; U. S. v. Patten, 226 U. S. 525, Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. [n. s.] 325; Ware & Leland v. Mobile County, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031; Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297; Leloup v. Mobile, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311, and many other cases.)

Case of United Mine Workers of America v. Coronado Coal Company, 42 Supreme Court Reporter, l. c. 583.

It does not appear to us that the words in the page referred to in the above-entitled cause,

"unless the obstruction to mining is intended to restrain interstate commerce in it, or has neces-

> sarily such a direct, material or substantial effect to restrain it, that the intent may be reasonably inferred,"

were meant to constitute such a qualification to the declaration that proceeds it, namely:

> "That coal mining is not interstate commerce, and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce,"

as to leave a gap or loophole which would make the declaration that coal mining is not interstate commerce nor its obstruction a restraint of that commerce, meaningless and practically obliterate the distinction between state and interstate control.

If we interpret that portion of the Coronado decision correctly, it means that there must be either some direct proof in the case that the defendants had in mind, or the circumstances indicated that they had in mind the intention to obstruct or to restrain the interstate shipment of the coal or that the conspiracy and its execution was so wide and comprehensive as to amount to a practical stoppage of trade and commerce in the coal itself.

There was, we respectfully submit, none of these elements present in the instant case. It was, as said in the United Mine Workers case, supra, by this Court

in the above case has been affirmed by an unbroken line of decisions since that time. See cases of Kidd v. Pearson, 128 U. S. I, 20, 21; United States v. Knight, 156 U. S. Rep., l. c. 131; Texas & New Orleans Ry. Co. v. Sabine Transit Co., 227 U. S., l. c. 111; Southern Pacific Terminal Co. v. Interstate Commerce, 219 U. S., l. c. 498; Bacon v. Illinois, 227 U. S. Rep., l. c. 515, 516; Arkadelphia Milling Company v. St. Louis & Southwestern Ry. Co., 249 U. S., l. c. 151; Delaware, Lackawanna and Western R. R. Co. v. Yurkonis, 238 U. S., l. c. 449; Heisler v. Thomas Colliery Co. et al., 43 United States Supreme Court Reporter, loc. cit. 86.

In the latter case, decided November 27th, 1922, Mr. Justice McKenna, speaking for this Court in affirming the doctrine of the case of Coe v. Errol, pointed out with a most direct and convincing emphasis the result that would follow from placing the products of the state destined for market in other states within the category of interstate commerce, as follows:

> "The reach and consequences of the contention repels its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article from a state determines it to be interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its

growth or production, and in the case of coals, as they lie in the ground, the result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats; the cotton of the South; the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production." (See page 6 of opinion, also 43 U. S. Rep., l. c. 86.)

This doctrine is also affirmed in the case of United Mine Workers of America v. Coronado Coal Company, supra.

The majority opinion of the United States Circuit Court of Appeals in the instant case, while admitting that manufacture alone is not interstate commerce, yet by a process of reasoning, ingenious and elaborate, but, we respectfully submit, unsound, attempts to bring the manufacture of articles intended for interstate shipment within the category of interstate commerce by characterizing it as an essential part of an indispensable step in the execution of inter-

state commerce control or in the continuously flowing currents of interstate commerce.

Leaving aside the question that in the very nature of things the intention of the manufacturer to make and ship any article in his factory does not stamp it with the character of finality since it may be sent somewhere else or sold within the state if the manufacturer change his mind or his customer may refuse to receive it because of defects or for other reasons, the above proposition is, we respectfully submit to this Court, most successfully met and refuted in the dissenting opinion of Judge Stone in this case (see Appendix "C", also United Leather Workers' International Union v. Herkert & Meisel Trunk Company et al., 284 Fed. Rep., page 459), as follows:

> "As to the contention that because an article is contracted for, intended for, or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon the argument that if the manufacture is prevented, the article cannot enter interstate commerce, and, therefore, manufacture is an 'intermediate step' in and an integral part of such commerce. **This is patently true as a result of logical reasoning, but is it true when the problem before the court is to define that somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over**

intrastate commerce and internal police regulation?''

''Such a problem must be solved along **'practical' as well as logical lines.** As said in Diamond Glue Company v. United States Glue Company, 187 U. S. 611, at page 616:

'' 'In modern societies every part is related so organically to every other that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made.' (See, further, Kidd v. Pearson, 128 U. S. 1, 21; Coe v. Errol, 116 U. S. 517, 525, 527; Tredway v. Riley, 32 Nebraska 495.)

''If this were otherwise, as said in Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531,

> 'all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1, 21).' ''

(See Appendix ''C'', dissenting opinion of Judge Stone, 284 Fed. Rep., l. c. 459.)

Decision in Conflict With Those of This Court.

The decision of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this case is in direct conflict with the case of Coe v. Errol, 116 U. S. 517; Hammer v. Dagenhart, 247 U. S. 251; United Mine Workers of America v. Coronado Coal case, supra; Heisler v. Thomas Colliery Company case, and in point of fact all the cases decided by this Court were, wherein this question was determined.

Danville Local Union No. 115 v. Danville Brick Company Case, 283 Fed. Rep., l. c. 910.

The majority decision of this Court is in conflict with the decision of the United States Circuit Court of Appeals for the Seventh Judicial Circuit in the above case, where under practically similar facts, it was held that interference with a manufacture of brick by a company which in the ordinary course of business shipped it outside of the state, was not an interference with interstate commerce, **even though complainant had at the time in effect a particular contract to furnish brick outside of the state, which it was prevented from fulfilling through the defendants' interference with the operation of its plant.**

Gable v. Vonnegut Machinery Company, 274 Fed. 66.

The decision of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this case is also in conflict with the decision rendered in the above case by the United States Circuit Court of Appeals for the Sixth Judicial Circuit, in which the facts are so analogous to those of the instant case as to fit it like a glove, and wherein it is said, at page 73:

> "But all these statements combined fall short of alleging interference with interstate commerce under either the Sherman or Clayton Acts. Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacturing is not commerce. **None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the Federal Court merely because a strike interferes with the manufacture of his products, which are sold generally in interstate commerce.**"

It seems to us, in conclusion, that the same rule of law which applies to articles in process of manufacture or before their shipment into another state—though destined for such shipment—should also apply to interference with the manufacture of the goods in the absence of a conspiracy to directly obstruct the

said shipment and the disposition of goods in an outside state, since both propositions are based upon practically the same principle, whether it concerned the right of the taxing authorities of the state to impose taxes upon the articles or of the courts of the state to prevent an unlawful interference with their production.

Both in the brief and oral argument in the United States Court of Appeals, we sought to impress this view upon the Bench of that court, because of our conviction that it was vitally essential to the preservation of the distinction between interstate and state commerce that this rule should be applied in the taxation of products within the state or interference with their production, and we respectfully submit that a point of time when goods or interference with their production should cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation should be so definitely settled as to leave no room for doubt in its application, and that point, we submit, is, as stated in Coe v. Errol and Hammer v. Dagenhart, supra, when they commence their final movement for transportation from the state of their origin to that of their destination, at which stage alone, interference can be said to violate the interstate commerce laws.

The adoption of any other rule will, we respectfully submit, lead to a bewildering confusion in which it will be practically impossible to define or limit the boundaries of national control and to preserve to the states the powers which the Constitution gives them, and to distinguish intelligently the question of jurisdiction as between the federal and state courts.

We, therefore, submit, that the respondents in this case were not entitled to a decree of injunction against your petitioners (the defendants); that the decision of the United States Circuit Court of Appeals for the Eighth Judicial Circuit affirming the judgment of the District Court and granting said decree of injunction against your petitioner is erroneous because opposed to the law and the evidence, and because it is an attempt to exercise a jurisdiction over your petitioners, which properly, legally and exclusively belongs to the courts of the State of Missouri; that it is erroneous because opposed to the prior decisions of this Court, as hereinbefore mentioned, and which in the language of Judge Stone in his dissenting opinion it has refused to follow (see United Leather Workers' International Union v. Herkert & Meisel Trunk Company et al., 284 Fed. Rep., l. c. 459), and that in view of the importance of the decision of the United States Circuit Court of Appeals in this case, of its conflict with decisions of this Court and

of the other circuits mentioned, that the defendants should be granted this writ, or, in the alternative, that their appeal should be heard and the decision of the United States Circuit Court of Appeals for the Eighth Judicial District should be reversed.

Respectfully submitted,

JOHN P. LEAHY,
Solicitor for Petitioners.

State of Missouri, } ss.
City of St. Louis. }

John P. Leahy, of lawful age, having first been duly sworn, deposes and says on his oath that he is solicitor for said petitioners; that he has read the foregoing petition, and is acquainted with its terms; that the facts therein stated are true except as to those averments therein made upon information or as matters of opinion, and those affiant verily believes to be true; and that the said application and petition are not made or presented for the purpose of delay, but in good faith and in the sincere belief, under advice of counsel, that the same are well founded in law and equity.

John P. Leahy.

Sworn to and subscribed by the above-named affiant at said City of St. Louis, before me, the undersigned, this 15th day of February, A. D. 1923.

Harriet Cox,
Notary Public within and for the
(Seal) City of St. Louis, Missouri.

My term expires February 22, 1926.

Certificate of Counsel.

I, the undersigned, counsel for said petitioners, hereby certify that I have examined the foregoing petition and am acquainted with its contents, and that in my opinion the same is well grounded in point of law and equity, and that the said application is not made for delay, but in good faith, and because counsel believe the same is based on meritorious and substantial grounds.

John P. Leahy,
Counsel for Petitioners.

APPENDIX A.

Opinion of the District Court on the Granting of the Permanent Injunction.

Plaintiffs, and each of them, are engaged in the manufacture of trunks, valises, hand-bags and similar articles, which they sell on orders in the State of Missouri, and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiffs' business consists in sales, on orders for their products, in other states than the State of Missouri.

Prior to, and at the time of, the issuance of the temporary restraining order herein, each of the plaintiffs had on file many unfilled orders from states other than the State of Missouri, for goods, which goods, when manufactured, were to be shipped in interstate commerce. A strike was called by the defendants, which are Local Labor Unions, or officers and members of such Unions, pursuant to a vote taken by the Unions and in the regular way under the rules and by-laws of the Unions. This strike was called after a fruitless effort to agree upon wages and upon a contract embracing the terms and conditions of future employment, which seems to have had therein the phase of collective bargaining.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employees of the plaintiffs quit plaintiffs' employment. Thereafter, and until the temporary restraining order was issued herein,

the several shops of plaintiffs were picketed by striking employees; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs, or some of them. During this picketing many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employees, and divers employees who continued in the employment of plaintiffs, vile and opprobrious names; there were instances of domiciliary visits accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers; so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. Many of the goods, in fact the larger proportion thereof, which plaintiffs would have made, but were in the mode above mentioned prevented from making, would have been shipped when manufactured, to other states, to fill what is called in the record "interstate orders". There was no actual interference with, or hindrance of any interstate movement, or shipment of any goods made by plaintiffs, or by either of them, for the very simple reason that the goods designed for interstate shipment have never come into existence on account of the interference mentioned. For, as forecast, these goods could not be manufactured because the plaintiffs' former workmen struck and quit, and other workmen could not be obtained to manufacture them; these potential workmen being kept away by a too numerous picketing and by

threats and intimidation. Such goods as were actually made by plaintiffs have been shipped in interstate commerce (when such was their destination) without let or hindrance. The methods used by defendants in preventing plaintiffs from obtaining other workmen have been, as stated, in numerous proven instances, unpeaceful and unlawful.

Barring the question of jurisdiction, and the existence of a conspiracy, plaintiffs are unquestionably entitled to the relief by injunction for which they prayed. Indeed, counsel for defendants seemingly concede this is a tacit way, because the burden of counsel's contention is bottomed solely upon the alleged phases of jurisdiction and absence of a conspiracy. There is no diversity of citizenship involved in the case. If this Court has jurisdiction at all, it gets it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209).

Upon this point it is urged that, since the goods of plaintiffs which they intended to ship in interstate commerce when they came into existence were not in existence at the time defendants unlawfully interfered with plaintiffs' business, the case does not fall either within the purview or protection of the Sherman Anti-Trust Act, supra, and, therefore, this Court has no jurisdiction. Confessedly the point urged is, at least on principle, a close and difficult one. So much of the language of the Sherman Anti-Trust Act, supra, as seems pertinent to this question reads thus:

> "Every contract, combination, in the form [—] a trust or otherwise, or conspiracy in restraint of trade or commerce among other states,

> or with foreign nations, is hereby declared to be illegal." (Sec. 1, Act of July 2, 1890, Chap. 647, 26 Stat. 209.)

Pursuant to the provisions of Section 4 of the Sherman Anti-Trust Act, supra, jurisdiction to enforce compliance with the provisions of the Act by injunction is conferred upon the Federal District Courts, sitting as courts of equity. When we read Sections 1 and 4 together, and convert the definition of Section 1 into plain and concise language, it is simply provided, that every conspiracy in restraint of interstate commerce may be enjoined in a federal court; subject, of course, in a labor dispute to the qualifications set out in the Clayton Act. It is strenuously contended by learned counsel for defendants that when Congress referred, in the Sherman Anti-Trust Act, to the restraints of interstate commerce, it held in mind the usual and ordinary definition of such commerce; and that the questions of when such commerce begins, and when it ends, are referable to the well known definitions of this commerce which have long been well settled in the federal courts.

Illustrating this view, and this contention, it was held in the fairly early case of In re Green, 52 Fed., l. c. 113, in an opinion rendered by Judge (afterwards Mr. Justice) Jackson, that

> "when the (interstate) commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but the actual delivery of it to a common carrier for transportation, or

the actual commencement of its transfer to another state * * * Neither the production or manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade and traffic with citizens of other states, nor the preparation for their transportation from the state where produced or manufactured prior to the commencement of the actual transfer or transportation thereof to another state, constitutes that interstate commerce which comes within the regulating power of Congress."

This definition of interstate commerce with reference to when it begins, learned counsel for defendants urge, has been very lately affirmed and followed by the Supreme Court of the United States in the case of Hammer v. Degenhart, 247 U. S., l. c. 272, where it was said:

"Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation.

"'When the commerce begins is determined not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another state (Mr. Justice Jackson in re Green, 52 Fed. 113).'

"This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise all manufacture intended for interstate shipment would be brought under federal

> control, to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the constitution when they vested in Congress authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1)."

The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust law. **If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act, supra.** But the matter is not one of first impression in this circuit. Therefore, **it is my duty, regardless of any personal views or convictions which I may hold** upon the subject, to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit.

In the case of Dowd v. United Mine Workers of America et al., 148 C. C. A., 495, local citation 51, it was said by the Circuit Court of Appeals of this Circuit, that:

> "Some of the coal companies were not actually engaged in interstate commerce at the time the alleged acts were committed by the defendants;

but they were preparing to do so; and were prevented from so doing, as they allege, by the wrongs of the defendants. It was held in Pennsylvania Sugar Refining Co. v. American Sugar Refining Co. et al., by the Circuit Court of Appeals for the Second Circuit, 166 Fed. 254, 92 C. C. A., 318, that:

"A conspiracy to prevent a manufacturer who procures his supplies and disposes of his products by means of interstate commerce from engaging in business at all necessarily places restrains upon such commerce. Its flow is restricted and interrupted. The importation and exportation of articles of commerce are directly prevented, and none the less so because the conspiracy may be of so wide a scope as to interfere with interstate commerce also."

To the same effect in Thompson et al. v. Union Castle Mail Steamship Co. et al., 166 Fed. 251, 92 C. C. A., 315 (2nd Circuit).

It is next objected that the alleged wrongs of the defendants do not constitute an interference with interstate trade or commerce. We do not think, since the case of Loewe v. Lawlor, 208 U. S. 374, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Lawlor v. Loewe, 235 U. S. 5, 522, 35 Sup. Ct. 170, 59 L. Ed. 341, it can be said that this can be considered an open question. In rendering the opinion of the Supreme Court when the case was last before it, Justice Holmes said:

"The substance of the charge is that the plaintiffs were hat manufacturers who employed non-union labor; that the defendants were members of the United Hatters of North America, and also

> of the American Federation of Labor; that in pursuance of a general scheme to unionize the labor employed by the manufacturers of fur hats (a purpose previously made effective against all but a few manufacturers) the defendants and other members of the United Hatters caused the American Federation of Labor to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other states and against dealers who shall deal in them; and that they carried out their plan with such success that they have restrained or destroyed the plaintiffs' commerce with other states."

This charge being proven, the learned Justice further said (235 U. S. 534, 35 Sup. Ct. 172, 59 L. Ed. 341):

> "We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were proved and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named."

Again, touching the far-reaching power of Section 1 of the Sherman Anti-Trust Act, supra, it was said by the Supreme Court of the United States in Eastern States Lumber Association v. United States, 234 U. S. 600, that that section broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce.

After the decision of the Circuit Court of Appeals of the Eighth Circuit, in the case of Dowd v. United Mine Workers etc., supra, the latter case, under the

style of United Mine Workers of America v. Coronado Coal Co., was again before the Circuit Court of Appeals of this Circuit (258 Fed. 829). The question of jurisdiction was again raised and, seemingly, strenuously urged. The Court refused to re-examine the question of jurisdiction, bottomed there, as here, upon the construction of the provisions of the first section of the Sherman Anti-Trust Act, but contented itself with saying upon this point:

> "The learned counsel for defendants neither in their voluminous brief (326 printed pages) nor in their oral argument questioned these statements of facts, nor did they seriously attack the sufficiency of the evidence, but they insist that they do not establish that the plaintiffs were engaged in interstate commerce, and therefore these acts were not in violation of the Sherman Act. The leading case relied on is United States v. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, but this case, if not expressly overruled, has been much weakened by the later decisions of the Supreme Court, and it was so held by this court when this case was here before, 235 Fed. 1, 8, 148 C. C. A. 495. As this court, when this case was here before, held that the alleged wrongs and torts of the defendants charged in the complaint, and which at the trial were established by substantial evidence, constituted an interference with interstate commerce, and violated the Sherman Act, that opinion is the law of the case, and cannot be again re-examined."

I need not go into the somewhat complicated facts before the court in the Dowd case, supra. It will suffice to say that if the Coal Companies, which were

the plaintiffs therein, were, upon the facts, engaged in interstate commerce, then the plaintiffs here are also, upon the facts, engaged, and were at the time of the happening of the matters and things herein complained of, engaged in interstate commerce. In the Dowd case, the coal, or much of it, which was intended for interstate commerce, but which was prevented from flowing therein by the unlawful acts of the defendants there, had not been mined, and, therefore, was not in existence as a commodity of any sort of commerce for transportation; moreover, one of the plaintiffs had not engaged in business at all, but was preparing to do so, and was prevented by defendants therein from so doing. So, also here, the goods for which plaintiffs had orders in interstate commerce, and which were to be manufactured for shipment therein, were not in existence. They were prevented from coming into existence by the conspiracy of defendants and by the unpeaceful and unlawful overt acts done and committed by defendants in the carrying out of the conspiracy. The broad language of the Dowd case regarded, the additional fact in that case that a loaded car of coal was actually destroyed would seem too negligible a factor to call for a difference in the rule.

Therefore, following the rule so clearly announced in the Dowd case and the Coronado Coal Company case, as in duty bound, I am constrained, regardless of my own views, to hold that the plaintiffs here were engaged in interstate commerce and that the acts of defendants operated as restraints upon that commerce within the purview of the first section of the Sherman Anti-Trust Act.

I may dispose of the question of the existence of the conspiracy more briefly and with less difficulty, at least in my own mind. In order to do this logically a brief reference may again be made to the facts. These facts substantially are, that efforts to agree with plaintiffs on a new contract of employment having failed, the Local Unions, who are the defendants here, immediately called a general strike against the shops of all of the plaintiffs, and thereupon practically all of the employes of plaintiffs quit work and many of them began to picket plaintiffs' shops. This picketing was done in a way that was not lawful, and which is not legally permissible, even under the broad provisions of the Clayton Act. Defendant unions appointed committees to take charge of and manage this strike, which, of course, largely meant to manage the pickets who were engaged in picketing the shops of plaintiffs. No extra pay seems to have been given to those members of the Union who did picket duty, though apparently the pickets (as were others of the striking employes) were paid strike benefits by the respective unions to which they belonged. The pickets volunteered for duty, but as said above, they were in charge of the committees of the Local Unions. If these pickets committed unpeaceful and unlawful acts, therefore, absent any protest or disciplinary action by the Local Unions, the latter are liable for such acts. The Unions cannot be heard to say that having charge of and controlling these pickets, they are not to be held liable for the divers unlawful acts done by the pickets. If it be said that the Unions in such case should have some knowledge or notice of the unlawful acts committed by pickets

employed by them, and I think this ought to be conceded, the answer is that such knowledge and notice may be inferred from all the facts and circumstances shown by the evidence.

Neither is it necessary to prove the conspiracy alleged in the complaint by direct evidence. Such a conspiracy may be shown by circumstantial evidence. If the rule were otherwise it would ordinarily be impossible to establish a conspiracy in any case; a fortiori, in a labor dispute.

I conclude that the facts and circumstances disclosed a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit.

It allows that the permanent injunction prayed for by plaintiffs ought to be granted. Let a decree be drawn accordingly.

(Indorsed: "Filed Nov. 6 190 W. W. Nall, Clerk.")

APPENDIX B.

Majority Opinion of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Sanborn, Circuit Judge.

This is an appeal by United Leather Workers' International Union, Local Lodge No. 66, an association of about 600 union workmen of St. Louis, Missouri, and about 25 individual members of that association, defendants below, from a final decree of the District Court which enjoined them from compelling or inducing any of the employes of the plaintiffs, corporations of Missouri, whose places of business were in St. Louis, by threat, intimidation, force, abusive, violent or insulting language, the threat of superior numbers or pickets, by assaulting, threateningly accosting, laying hands upon, by following them to their homes, or intimidating the members of their families, to leave the service of the plaintiffs or to fail or refuse to perform their duties to the latter as such employes.

The plaintiffs were five corporations of the State of Missouri, who for a long time had been and were on and prior to the 10th day of April, 1920, engaged in selling, on orders from their customers, the great majority of whom were residents and citizens of other states than Missouri and had their places of business therein, manufacturing and shipping to such customers at their places of business, trunks, leather goods, and bags, which by such orders the customers bought and directed the plaintiffs to make and ship to them.

(1) This suit was founded on Section 1 of the Sherman Anti-Trust Act, which reads:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. Stat., Sec. 8820, Act of July 2, 1890; 26 Stat. 209, c. 647, Sec. 1).

The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means such as too many pickets, assaults, threats, and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous streams of the plaintiffs' interstate commerce, and prevent the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make, and deliver in interstate commerce, and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants.

The ordinary course of business of parties selling, making, and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the

sellers acknowledge in writing. Thereupon such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods (Rearick v. Pennsylvania, 203 U. S. 507, 511, 27 Sup. Ct. 159, 51 L. Ed. 295). The evidence was that when the defendants stopped the interstate commerce of the plaintiffs by stopping the making of the goods their customers had ordered the plaintiffs had such unfilled orders or contracts for the sale, manufacture, and shipment to their customers at the latters' places of business in states other than Missouri of these respective values: Herkert & Meisel Trunk Company, $200,000; James A. Quirk & Co., $15,000; F. A. Kolb Trunk & Case Company, $5,000; the Stability Leather Goods Company, $32,000; P. C. Murphy Company, $75,000—aggregating $327,000. The Supreme Court has declared that—

> "Where the contract is for the sale of the article and for its delivery in another state, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce, and not one relating only to manufacture" (Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 246, 20 Sup. Ct. 96, 109 [44 L. Ed. 136]).

Indeed, the established rule is that "interstate commerce," within the meaning of that term in the Constitution and the Anti-Trust Act, embraces far

more than the mere sale, exchange, and interstate transportation of the goods. It includes intercourse, it comprehends every contract, trade, and dealing between citizens of one state and those of another which contemplates the transportation of goods, persons, or information from one state into another, and every initiatory, negotiating, and intervening act of the parties to that trade or deal from the time the intercourse relating to it commences until the transportation and delivery have been completed. Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. 1, 17, 84 C. C. A. 167; International Text-Book Co. v. Pigg, 217 U. S. 91, 107, 30 Sup. Ct. 481, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106-108, 66 L. Ed. ...; United States v. Reading Co., 226 U. S. 324, 367, 368, 33 Sup. Ct. 90, 57 L. Ed. 243; Hopkins v. United States, 171 U. S. 578, 598, 19 Sup. Ct. 40, 43 L. Ed. 290; United States v. Swift & Co. (C. C.) 122 Fed. 529, 531; Welton v. State of Missouri, 91 U. S. 275, 23 L. Ed. 347; Caldwell v. North Carolina, 187 U. S. 622, 629, 23 Sup. Ct. 229, 47 L. Ed. 336; United States v. Tucker (D. C.) 188 Fed. 741, 742; Marienelli v. United Booking Offices of America (D. C.) 227 Fed. 165; In re Selman Heating & Plumbing Co. (D. C.) 204 Fed. 839, 840, 841-843; Robbins v. Shelby Taxing District, 120 U.S. 489, 497, 7 Sup. Ct. 592, 30 L. Ed. 694; Globe Elevator Co. v. Andrew (C. C.) 144 Fed. 881, 882.

(2) Under these authorities the contracts evidenced by the unfilled orders were contracts and transactions in interstate commerce. The acts of the customers in sending the orders were initiatory acts in contracts

in interstate commerce. The receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contracts and transactions in interstate commerce, and the direct restraint, and for a time the complete prevention and thereafter the partial prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping, or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act and brought the subject-matter of, the parties to the suit, and the relief the court granted far within the jurisdiction of the federal court under the Anti-Trust Act. Thus, Mr. Justice Harlan, delivering the prevailing opinion in Northern Securities Co. v. United States, 193 U. S. 197, 329, 24 Sup. Ct. 436, 453, 48 L. Ed. 679, said:

> "In United States v. E. C. Knight Company (156 U. S. 1), it was held that the agreement or arrangement there involved had reference only to the manufacture or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce, it would then have been covered by the Anti-Trust Act and would have been illegal."

And in Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 242, 20 Sup. Ct. 96, 107 (44 L. Ed. 136), the Supreme Court said:

> "When Congress has enacted a statute such as the one in question, any agreement or combina-

> tion which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national Legislature and violates the statute."

The execution of the combination or conspiracy of the defendants had exactly that effect. It directly operated and that operation was its patent and inevitable effect, not alone upon the manufacture, but upon the sale, transportation, and delivery of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce.

Moreover, the evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make, and deliver from the State of Missouri into other states where their customers received them. The evidence shows that the great body of the goods the plaintiff sold, made, and delivered were sold and shipped to customers in other states than Missouri; that two of the plaintiffs sold goods of the value of $2,950,000 per year; and that while the exact volume of the business of the other three does not appear, it is a fair inference from the proof that the five plaintiffs were pouring into the channels of interstate commerce goods of the value of at least $2,500,000 per annum. This course of business determined and demonstrated that the transac-

tions of these plaintiffs in causing and conducting these currents including the order contracts for the sale, making, transportation, and delivery of the goods in other states, the selling, the manufacture, the loading, shipping, and delivery of these goods at their destinations constituted interstate commerce. Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 401, 402, 403, 66 L. Ed. ...; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106, 109, 66 L. Ed. ...; Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 Sup. Ct. 244, 247, 66 L. Ed. ...; Swift & Co. v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 Sup. Ct. 101, 102, 103, 66 L. Ed. ...; United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 42 Sup. Ct. 105, 106, 66 L. Ed. .... "When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle." Swift & Co. v. United States, 196 U. S. 398, 399, 25 Sup. Ct. 276, 280 (49 L. Ed. 518). And where customers in other states order goods to be made by sellers in Missouri and shipped to them in the other states, sellers accept such orders, agree to so sell, make, and ship the goods and do so, and this is a typical constantly recurring course of action, the cur-

rent thus existing is a current of commerce among the states and the manufacture of the goods pursuant to the contracts is as much a part of that interstate commerce as is the contract of sale or the loading, the shipment, or the delivery. "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are ever flowing, are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control." Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 403, 66 L. Ed. ....

(3) The rights of the plaintiffs to keep their business running, to the continuous flow of their currents of interstate commerce, were property rights which they were legally entitled to exercise. Quinlivan v. Dail-Overland Co. (C. C. A.) 274 Fed. 56, 66; Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; King v. Weiss & Lesh Mfg. Co., 49 App. D. C. 377, 266 Fed. 257, 260.

(4, 5) Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made, but one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to

sell, make, and deliver in interstate commerce, and their prevention of the flowing of the currents of these articles in interstate commerce was to deprive the plaintiffs of their income from the sales and deliveries of the goods, and by this continuing loss of income to compel the submission of the plaintiffs to their demands. Moreover, the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make, and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce, and this result was so evident and unavoidable that the defendants could not have failed to know, to purpose, and to intend that this should be the result. "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result." United States v. Patten, 266 U. S. 525, 543, 33 Sup. Ct. 141, 145 (57 L. Ed. 333, 44 L. R. A. [n. s.] 352); Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 245, 256, 257, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 213, 20 Sup. Ct. 96, 44 L. Ed. 136; Duplex Co. v. Deering, 254 U. S. 443, 463, 467, 468, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196. The defendants cannot be credited here with an innocent purpose or intent, and even if they could be they were guilty of

combining to use and of using unlawful means, assaults, threats, too many pickets, following employes to their homes, and like intimidating acts that scared the plaintiffs' employes to leave them and prevented those desiring employment from taking it. A combination or conspiracy to use unlawful means to accomplish a lawful purpose, and its execution by the use of such means, is as violative of the act as a conspiracy to accomplish an unlawful purpose by lawful means.

(6) It is contended that because manufacture is not commerce and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other states, and the prevention of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate

commerce, neither is buying or selling or contracting to buy or sell the goods or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps, which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court.

In United Mine Workers of America et al. v. Coronado Coal Co. et al., 258 U. S. ..., 42 Sup. Ct. 570, at page 583, 66 L. Ed. ..., the Supreme Court, summing up the relation of coal mining to interstate commerce, said:

> "Coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce, unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred."

The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce, its relation to interstate com-

merce is governed by the same rule. If the obstruction to it is intended directly to restrain interstate commerce, or if such obstruction necessarily has such a direct, material, and substantial effect to restrain it, that the intent so to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust Act. The case in hand falls directly under this rule. The obstruction and prevention of the manufacture of the articles which the plaintiffs had made interstate commerce contracts to make, sell, and deliver, and to pour into their continuously existing currents of interstate commerce, could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial, and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles and thus to deprive them of their income; nor could it have been made without their reasonably inferred intent and purpose to obtain that result.

While the law governing cases of this class is the same in all cases, the conspiracies alleged, the evidence to sustain them, and the results in the various cases necessarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States, and to prevent any interstate trade or commerce in the coal produced from nonunion mines. Thus the court said:

> "The plaintiffs charge that there has been and is a continuously operating conspiracy between

union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it."

And it held that the plaintiffs were not entitled to recover against district No. 21 because "in a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in district No. 21 of 150,000 tons a week, 5,000 tons a week, which the Bache-Denman mines in most prosperous times could not exceed, would have no appreciable effect upon the price of coal or nonunion competition." 258 U. S. ..., 42 Sup. Ct. 570, 582, 584, 66 L. Ed. .... And the court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation. In the case before this court now, the gravamen of the complaint is, not that the defendants attempted to monopolize all interstate commerce, but that the defendants conspired and were executing that conspiracy by unlawful means to prevent if possible, and to restrain as far as possible the flow of the plaintiffs' existing continuous currents of interstate commerce and the performance of the interstate commerce contracts which they had made to sell, make, and deliver the articles which were the subjects of that commerce to customers in states other than Missouri.

It was not essential to the right of the plaintiffs to relief by injunction by the court below that the object or effect of the defendants' conspiracy and its execution should obstruct all interstate commerce or

all interstate commerce in that class of articles with which the plaintiffs were conducting interstate commerce, or that it should increase the price of such articles throughout the country. It was sufficient that the defendants' conspiracy was with the necessarily inferred intent, and that, as unlawfully executed by them, it had the effect directly and substantially to interfere with, restrain, and obstruct the large volume of interstate commerce which the plaintiffs were conducting to their irreparable injury. In the absence of the Anti-Trust Act, the plaintiffs had the right to conduct this interstate commerce. Congress has imposed no restraint upon it or them. The failure of Congress to impose any restriction on this commerce was in effect a declaration by that body that this interstate commerce should be free and untrammeled. Welton v. State of Missouri, 91 U. S. 275, 279, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691.

Not satisfied that this declaration by inaction was sufficient, the Congress granted to the federal courts the power to protect the freedom of this interstate commerce by the Anti-Trust Act. That act provides that—

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. St., Sec. 8820).

In the succeeding section it denounces the monopolization of any part of trade or commerce among the

states. While monopolies of interstate commerce and of parts of that commerce thus fall under the ban of the act, it denounces with equal force, clearness, and particularity every combination and conspiracy which directly and unreasonably restrains, interferes with, or obstructs, although it does not monopolize, or tend to monopolize, interstate commerce or any class of it. Direct and substantial restraint, obstruction, or destruction of interstate commerce, or of substantial parts of it, pursuant to a conspiracy or combination, is as violative of the act as a monopoly thereof.

In the Debs Case, 158 U. S. 564, at page 581, 15 Sup. Ct. 900, at page 905 (39 L. Ed. 1092), Mr. Justice Brewer said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. If a state with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?"

If the State of Missouri, by means of an act of its Legislature, had attempted to impose the restraint and obstruction upon interstate commerce which the defendants, through their conspiracy placed upon it in this case, the federal court, upon a proper application, would without doubt have prevented the success

of such an endeavor. That restraint and obstruction by the defendants clearly denounced as it is by the express terms of the Anti-Trust Act is much less justifiable than it would have been if imposed by the state.

Evidence of the interstate contracts, of the plaintiffs' currents of interstate commerce, of the unlawful acts of the defendants, of the times and manners of their commission, and of their direct and inevitable effect in preventing the performance of the plaintiffs' interstate commerce contracts, and in obstructing the currents of their interstate commerce, fully sustained the finding by the court below of the formation and existence of the conspiracy, of its execution by unlawful means, and of its inevitable effect, and well warranted the issue of the injunction.

In Gable v. Vonnegut Machinery Co. (C. C. A.) 274 Fed. 66, 71, 72, the complainant, the Vonnegut Machinery Company, was the agent of the defendant, the Toledo Machine & Tool Company, the manufacturing company, under a contract with the plaintiff to pay the latter 7½ per cent on the sale of the plaintiff's production in states other than that of the tool company. Complainant brought suit and obtained an injunction against the tool company and some of its striking employes on the ground that the latter had formed and were operating a combination to prevent and which did prevent the tool company from manufacturing its usual production, and thereby restrained its interstate commerce and deprived complainant of its commission under its contract. The court held that the Vonnegut Company must be

aligned with the tool company and not against it. And that court finally held that—

> "The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant" (274 Fed. at page 74).

On the other hand, in the case at bar the evidence convinces that the obstruction of the manufacture imposed by the defendants' combination and its execution by means of their unlawful acts necessarily had such a patent, inevitable, direct, and substantial effect in obstructing and preventing the plaintiffs' interstate commerce, that their intent to stop it, and if they could not stop it to restrain it as much as possible, must be reasonably inferred.

Counsel for the defendants cite Crescent Oil Co. v. State of Mississippi, 257 U. S. 129, 42 Sup. Ct. 42, 66 L. Ed. ..., which did not arise under the Anti-Trust Act, but involved the question whether a cotton gin operating in Mississippi and ginning cotton which the owner of the gin had bought and caused to be shipped to it from another state was an instrumentality of interstate commerce in such a sense as to withdraw it from the regulatory power of the state; Hammer v. Dagenhart, 247 U. S. 251, 268, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724, which involved the constitutionality of the act of Congress to regulate the transportation in interstate commerce of articles produced by child labor; Capital Dairy Co. v. Ohio, 183 U. S. 238, 22 Sup. Ct. 120, 46 L. Ed. 171, which questioned the constitutionality of

the legislation of Ohio relating to oleomargarine; Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 23 Sup. Ct. 206, 47 L. Ed. 328, wherein the constitutionality, as against contracts made before its passage, of an act of the State of Wisconsin requiring corporations incorporated elsewhere to file copies of their charters, to pay small fees, and to meet certain other requirements as a condition of doing business in that state, was involved, and other authorities less relevant including those adjudging the time when articles flowing in the currents of interstate commerce make their entrance and exit from it and determining the line of demarcation between the exclusive power of the United States under the commerce clause of the Constitution and the police and regulatory powers of the states. In the opinions in many of these cases cursory remarks may be found about the relation of manufacture to interstate commerce and to commerce, but they fall under the familiar rule that the authority of expressions and statements in the opinions of courts is always limited to the specific question which they were considering and deciding when they were used. Cohens v. Virginia, 6 Wheat., 264, 399, 5 L. Ed. 257; United States v. Wong Kim Ark, 169 U. S. 649, 679, 18 Sup. Ct. 456, 42 L. Ed. 890; Traer v. Fowler, 144 Fed. 810, 817, 75 C. C. A. 540.

On the other hand, the Supreme Court has repeatedly sustained suits in equity under the Anti-Trust Act to enjoin the operation of combinations to restrain or obstruct interstate commerce by restraining or obstructing manufacture that constituted a part of or a step in such commerce. Addyston Pipe & Steel Co. v. United States, 175 U. S. 212, 240, 241, 246, 20

Sup. Ct. 96, 44 L. Ed. 136; Montague & Co. v. Lowry, 193 U. S. 38, 45; American Column & Lumber Co. v. United States, 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed. .... In Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., 166 Fed. 254, 256, 258, 259, 92 C. C. A. 318, the plaintiff corporation, which had been engaged in importing raw sugar into Pennsylvania, there manufacturing it into refined sugar, selling and shipping it to customers in other states and countries, had ceased to do business during the Spanish War. That corporation, after consideration, formed the intention of engaging in business of that character again. The defendant corporation, which was engaged in the same class of business conspired with one Segal, who held a majority of the stock of the plaintiff, to prevent the latter from again commencing the business contemplated, by making a large loan to Segal, taking his stock and the authority to vote it as security for the payment of the loan, and by the exercise of this voting power prevented the plaintiff from again commencing its business of manufacturing and selling refined sugar in interstate commerce. The plaintiff's action was for treble damages under the seventh section of the Anti-Trust Act. U. S. Comp. Stat., Sec. 8829. The first defense was that the conspiracy charged related to manufacture and was consequently exempt from the prohibition of the Anti-Trust Act, and United States v. E. C. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, was cited. But the Circuit Court of Appeals of the Second Circuit held that the conspiracy was not violative of the act in the Knight case only because it did not directly restrain interstate commerce, but that the alleged

conspiracy in the Pennsylvania Refining Company's case to prevent the latter from manufacturing, selling, and shipping refined sugar at all naturally, directly, and inevitably restrained interstate commerce and entitled the plaintiff to relief under the Anti-Trust Act.

When the combination or conspiracy of the defendants in this case was formed and when its execution commenced by the strike, by the withdrawal at one time of nearly all the plaintiffs' workmen, the quick picketing with too many pickets of their plants, and the complete stoppage of their manufacture for the time being, the plaintiffs had made unfilled interstate commerce contracts, to sell, make, and ship to their customers in other states goods of the value of more than $300,000. They had existing continuously flowing currents of interstate commerce from Missouri to other states in the nation which carried their goods of the value of more than $2,500,000 per annum. In the execution of their combination, by too many pickets, by intimidation by numbers, by threats, by following to their homes, and by other unlawful and violent acts, the defendants scared many of the plaintiffs' remaining employes into withdrawing from their employment, and deterred those who wished to work for the plaintiffs from taking employment to such an extent that until they were restrained by the preliminary order of the court below they prevented the making of the articles the plaintiffs had contracted to sell, make, and deliver in interstate commerce and stopped the flow of the plaintiffs' currents thereof. And after the restraining order was issued they continued the execution of their conspiracy and their un-

lawful acts to such an extent that they continued to obstruct and restrain to a very large and damaging extent the amount of the plaintiffs' manufacturing and of their interstate commerce, so that but a small per cent of their normal currents of interstate commerce could flow. The necessary and inevitable effect of this prevention and restriction of the making of the articles the plaintiffs had contracted to make, sell, and deliver, was to prevent for a time and drastically restrain their interstate commerce. The defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands could not have been unaccompanied with their intent and purpose to prevent, if possible, and, if not, to restrict their interstate commerce and thus to stop or diminish their income, for only by such stoppage or diminution would the stoppage or restriction of manufacturing inflict the compelling injury they sought to impose. The defendants are estopped from denying the necessary direct inevitable effect of their acts. The prevention for a time and the subsequent restriction of the intermediate step of manufacturing the articles the plaintiffs had contracted to sell, make, and deliver in interstate commerce necessarily had such a direct, material, substantial, and inevitable effect to restrain the interstate commerce of the plaintiffs that the defendants' purpose and intent so to do must be reasonably inferred, both as a matter of fact and as a matter of law; as a matter of fact, because the evidence produces an abiding conviction that such was the intent and purpose of the defendants, and as a matter of law because they are estopped from deny-

ing that they had the intent and purpose to produce the direct, natural, necessary, and inevitable consequences of their acts. The decree below must accordingly be, and it is

Affirmed.

Reference is made to the opinion of this court in Silverstein v. Local No. 280, of the Journeymen Tailors' Union et al., 284 Fed. ..., which is filed herewith.

APPENDIX C.

Dissenting Opinion of Judge Stone.

Stone, Circuit Judge (dissenting).

This is an appeal by a labor organization, certain officials and members thereof from a final decree of injunction.

Appellants contest the jurisdiction of the court as a federal court. There is no longer room to question the applicability of the Sherman Act, within the limits of the Clayton Act (38 Stat. 730), to labor organizations and strikes. But the Sherman Act relates solely to interstate commerce, and the contention made here is that this conspiracy has no legal connection with interstate commerce. The facts necessarily bearing on this jurisdictional question are as follows: Appellees are trunk manufacturers. A part of their products are shipped in interstate commerce. Appellants desired to unionize the plants of appellees. If peaceful means failed, they designed to call a strike and so picket the plants as to prevent their operation until the appellees would submit to unionizing the plants. In pursuance of this plan, strikes were called and picketing put in operation. The evidence substantially shows that this picketing was conducted in an unlawful manner. **No attempt was made to prevent appellees from shipping any manufactured products or from receiving any raw material. There was no boycott of appellees' products or customers, no interference with interstate transportation, no purpose to interfere with such com-**

merce. The conspiracy was confined to preventing manufacture. The purpose of the conspiracy was to accomplish unionization by preventing manufacture and in so way includes as an object preventing appellees, by boycott or otherwise, from purchasing, selling, sending, or receiving products or materials. The jurisdictional question turns, therefore, on the point of whether a conspiracy for the sole purpose of unionizing a manufacturing plant is a restraint of interstate commerce because some of the articles which are prevented from being made are intended for interstate commerce and would normally enter therein.

My Associates deem this situation reveals a conspiracy to interfere with interstate commerce, within the meaning of the Sherman Act. The points they make in their able opinion are: (1) That the manufacture of articles contracted, intended, or normally going into interstate commerce, constitutes a part of interstate commerce; (2) that where the purpose of the conspiracy is to prevent the manufacture of such articles, the inevitable effect is to interfere with interstate commerce, therefore an intent to so interfere must be inferred and the conspirators be estopped from denying that such was the actual intent; (3) that the means of executing the conspiracy were unlawful. **I cannot concur in these views or the conclusion reached, because I think controlling decisions of the United States Supreme Court are to the contrary.**

As to the contention that because an article is contracted for, intended for, or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon

the argument that if the manufacture is prevented, the article cannot enter interstate commerce, and therefore manufacture is an "intermediate step" in and an integral part of such commerce. **This is patently true as a result of logical reasoning,** but is it true when the problem before the court is to define that **somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation?** Such a problem must be solved along "practical" as well as logical lines. As said in Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611, at page 616, 23 Sup. Ct. 206, at page 208 (47 L. Ed. 328):

> "In modern societies every part is related so organically to every other, that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made. See, further, Kidd v. Pearson, 128 U. S. 1, 21; Coe v. Errol, 116 U. S. 517, 525, 527; Tredway v. Riley, 32 Neb. 495."

If this were otherwise, as said, in Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), "all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the

framers of the Constitution when they vested in Congress the authority to regulate commerce among the states.' Kidd v. Pearson, 128 U. S. 1, 21."

In both of the preceding quotations, citation is made of Kidd v. Pearson, 128 U. S. 1, 21, 9 Sup. Ct. 6, 32 L. Ed. 346. The reasoning contained in that citation, approved in these later cases, as set out on page 21 of 128 U. S., on page 10 of 9 Sup. Ct. (32 L. Ed. 346), is as follows:

> "If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are, and must be, local in all the details of their successful management.
>
> "It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme,

when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

"It was said by Chief Justice Marshall, that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to secure uniformity of regulation against conflicting and discriminating state legislation. See, also, County of Mobile v. Kimball, supra, at page 697.

"This being true, how can it further that object so to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunties, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility,

and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the state; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the state governments, and more provocative of conflicts between the general government and the states, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine."

In applying this rule of practical logic to the question of whether or not manufacture of an article of interstate commerce is, as such, a part of interstate commerce, I find, as it seems to me, a long, unbroken line of decisions to the effect that it is not. These decisions, many in number, began in 1885 with Coe v. Errol, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715, and came down to June, 1922, with the noted case of United Mine Workers of America v. Coronado Coal Co.

From these cases I will select a few quotations which, in my judgment, sustain the view that manufacture of articles to be shipped in interstate commerce is not a part of interstate commerce within the meaning of the Constitution, as construed by the Supreme Court. I am impelled to do so by my high regard for the ability and learning of the judges with whom I feel compelled to differ in this case. I shall endeavor, carefully, to choose, and italicize in part,

extracts which were not merely vagrant expressions of the court but such as were made directly applicable to determination of the issues there involved.

In the United Mine Workers' case, supra (decided June 5, 1922), this court was reversed for holding that mining coal was interstate commerce. The facts and issues in that case seem to me directly controlling here. There was a strike, the purpose of which was to unionize the mines in a certain locality. Here the strike was to unionize certain trunk factories, all of which were located in St. Louis, Missouri. Unlawful means were there, as here, used to carry on the strike; the only difference being that in that case such means went to the further extent of murder, riot, and arson. In that case, Chief Justice Taft, for the court, said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, we said: 'The making of goods and the mining of coal are not [interstate] commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439.' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

In Lemke v. Farmers Grain Co. (decided February 27, 1922) the Court said:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line

between state and federal authority under facts presented which required a definition of interstate commerce where the right of state taxation was involved, or **manufacture** or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here."

In Crescent Cotton Oil Co. v. Mississippi (decided November 14, 1921) the Supreme Court considered the question of whether the Anti-Gin Act of Mississippi (Laws Miss. 1914, c. 162) interfered with interstate commerce. On that point the Court said:

"It is clear that these decisions cannot be of aid in determining the question we are now considering, which is whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the state, for its use in another state, all of the cotton seed which may be purchased in connection with its ginning operations. * * *

"The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short, but important, step in the manufacture of both the seed and the fiber into useful articles of commerce; **but that manufacture is not commerce** was held in Kidd v. Pearson, 128 U. S. 1, 20, 21; United States v. E. C. Knight, 156 U. S. 1, 12, 13; Capital City Dairy Company v. Ohio ex rel. Attorney Gen-

eral, 183 U. S. 238, 245; McCluskey v. Marysville & Northern Railway Company, 243 U. S. 36, 38, and in Hammer v. Dagenhart, 247 U. S. 251, 252; Arkadelphia Milling Company v. St. Louis & Southwestern Railway Company, 249 U. S. 134, 151, 152. **And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce.** Coe v. Errol, supra, and New York Central etc. Company v. Mohney, 252 U. S. 152, 155. When the ginning is completed the operator of the gin is free to purchase the seed or not, and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or to ship it out of the state for use in another, and, under the cases cited, **it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power.**

"The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede, **but are not a part of, interstate commerce,** renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

In Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), the Court said:

"When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation

does not make their production subject to federal control under the commerce power.

"Commerce 'consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' **The making of goods and the mining of coal are not commerce,** nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439.

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but **the production of articles intended for interstate commerce is a matter of local regulation.**

" 'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state.' (Mr. Justice Jackson in Re Green, 52 Fed. Rep. 113.) This principle has been recognized often in this court. Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states. Kidd v. Pearson, 128 U. S. 1, 21."

In Kidd v. Pearson, 128 U. S. 1, at page 20, 9 Sup. Ct. 6, at page 10 (32 L. Ed. 346), the Court said:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this Court in County of Mobile v. Kimball, 102 U. S. 691, 702, is as follows: 'Commerce with foreign countries, and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with

an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

In Capital City Dairy Co. v. Ohio, 183 U. S. 238, at page 245, 22 Sup. Ct. 120, at page 123 (46 L. Ed. 171), the Court said:

"The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All the acts of the corporation which were complained of related to oleomargarine **manufactured by it in the State** of Ohio, in violation of the laws of that state, and therefore operated on the corporation within the state and affected the product manufactured by it **before it had become a subject of interstate commerce.** Kidd v. Pearson, 128 U. S. 1; United States v. E. C. Knight Co., 156 U. S. 1. It results that the plaintiff in error is not in a position to assail the validity of the statutes, because of their supposed operation upon interstate commerce, and we are not called upon to express an opinion respecting the constitutionality of the statutes upon this assumption."

The cases from which the above quotations are taken, as well as the many other similar decisions

cited in those cases, establish the doctrine that the manufacture of goods, which are to be later transported in interstate commerce, is not a part of interstate commerce.

As to the second point in the majority opinion, to wit, the intent to interfere with interstate commerce: It is undoubtedly the law that a conspiracy formed with the specific intent to interfere with (usually by restriction of) interstate commerce is within the domain of national control and subject to the Sherman Act. This is true irrespective of the means employed toward its execution. Because this is so, there are cases in which the act has been held applicable where the means happened to be control of or prevention of production of the particular article of interstate commerce. Such are American Column & Lumber Co. v. U. S., 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed. (decided December 19, 1921); U. S. v. Reading Co., 226 U. S. 324, 33 Sup. Ct. 90, 57 L. Ed. 243. But, in that character of cases, it was not the means employed to effectuate the conspiracy that brought it within the federal control. It was the specific, actually existing unlawful intent and purpose of the conspiracy which had that effect.

This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing and, if possible, preventing complainants from manufacturing their products. This was to be

brought about by preventing them procuring the necessary labor except through employment of members of the union. But **there was no specific purpose or intent to affect interstate commerce such as was alleged, for example, in the United Mine Workers' Case, supar. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character.** That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found it must be imputed, as matter of law, not fact, from the circumstances that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce.

It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here again this logic and rule must be applied in a practical way. If it is not so applied the entire police power of the states is in danger of absorption by the national government. This is true because, in our complex social and economic life, production, as well as manufacture, of all kinds of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be distinguished from those which

affect it directly. The former are without, the latter are within, national control.

United Mine Workers v. Coronado Coal Co., supra;
U. S. v. Patten, 226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325;
Ware & Leland v. Mobile County, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031;
Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297;
Leloup v. Mobile, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311—
And many other cases.

Whether an act, a course of conduct or a state statute affects interstate commerce incidentally or directly, within the above rule, depends upon the circumstances of each particular case. It is not shown, in this evidence, that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars' worth of goods annually and that much of this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in U. S. v. Patten,

226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325, and similar cases.

To my mind, the facts of this case are much stronger than the United Mine Workers' Case, supra, and there the Supreme Court found no jurisdiction, although it said:

> "The circumstances are such as to awaken regret that, in our view of the federal jurisdiction, we cannot affirm the judgment."

The consequences of a legal rule are often useful in testing its accuracy. **There can be no shadow of doubt as to the consequences of the rule laid down in the majority opinion. The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.** Moreover, if this be true as to the products produced in such industry or factory, it is entirely logical the same rule should apply to the raw materials used in such production if any of them are subjects of interstate commerce. In a practical sense, this would result in all strikes being subject to federal jurisdiction, because scarcely any factory is so small that some of its finished products do not enter into interstate commerce. **And yet the Supreme Court has, within the six months, held that a strike in a mine shipping seventy-five per centum of its coal in interstate commerce and involving many miners and much property was without the federal jurisdiction** (United Mine Workers' Case, supra), and that Court has never departed from, but has repeatedly and recently affirmed, the

doctrine, announced almost forty years ago, that manufacturing of interstate products is not interstate commerce.

As to the third basis of the majority opinion—that the means employed to execute this conspiracy were unlawful: Such means included intimidation and violence. The unlawful character of intimidation and violence is beyond question, but that has nothing to do with the question of whether punishment therefor or prevention thereof should be in the state or in the federal courts. In the United Mine Workers' Case, supra, the means employed were far more vicious than here, including arson, riot and murder. Yet it was not even suggested, in that bitterly contested case, that the means employed by the strikers had anything whatever to do with the jurisdiction of the court.

For the above reasons, I find myself unable to concur in the result or reasoning of my able associates, and therefore dissent therefrom. I am further sustained by the case of Gable v. Vonnegut Machinery Co., 274 Fed. 66, recently decided by the Court of Appeals for the Sixth Circuit. In that case, by far the greater part of the products manufactured, in the plants affected, went into interstate commerce and contracts were in existence for much of such future product. In discussing the scope of the Sherman and Clayton Acts that Court said (page 73):

> "Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacturing is not

commerce. None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interferes with the manufacture of his products which are sold generally in interstate commerce."

The Court further said (page 74):

"The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant. The fact that shipment was interfered with, only because goods were not manufactured, merely incidentally and indirectly affected interstate commerce."

APPENDIX D.

IN THE

United States Circuit Court of Appeals.

EIGHTH CIRCUIT.

SEPTEMBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al., Appellants, vs. HERKERT AND MEISEL TRUNK COMPANY, a Corporation, et al., Appellees.	No. 5865.

PETITION OF APPELLANTS FOR REHEARING.

Now comes defendant, Local Lodge or Union No. 66 of the United Leather Workers International Union, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Wal-

ter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk, defendants and appellants in the above-entitled cause, and believing themselves to be aggrieved by the decision of this Court in the above-entitled appeal, hereby pray that the said decision may be set aside and that a rehearing of the said appeal may be granted by the Court for the following reasons, to wit:

(1) That the majority decision of the Court is based upon an erroneous construction of Section 1 of the Sherman Anti-Trust Act. Compiled Statutes of the United States, Section 8820, Act of July 2nd, 1890; 26 United States Statutes, Chapter 647, Section 1, and an erroneous application of the said law to the facts of this case.

(2) That the majority decision of the Court is in part erroneously based upon an argument stated to have been made in the said opinion and decision in the argument of counsel for defendants, to wit, that the only purpose of the defendants (appellants) was to force the plaintiff to employ none but union men and to grant other demands. No such argument having been made by counsel for defendants, nor is there any evidence of any character whatever in the entire record in this case that the defendant purpose in

the calling of the strike was to force the plaintiffs to employ none but union men, and the assumption by the Court that the defendants had such a purpose is based upon conjecture and not upon evidence as contained in the record of this case, and therefore, unfair to the defendants. (See page 6, majority opinion.)

(3) That the majority decision of the Court was based upon the erroneous assumption that a conspiracy existed amongst the defendants (appellants) to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, there not being a particle of evidence in the entire record that the defendant entered into any agreement to compel the plaintiffs to employ none but union men. Nor is there any evidence in the said record from which the existence of such an agreement for such purpose could reasonably be inferred, and the assumption of such an agreement for said purpose was unwarranted by the evidence, purely conjectural and therefore unfair to the defendants.

(4) That the majority opinion of the Court in this case is in positive and direct conflict with the decisions of the Supreme Court of the United States in the cases of Kidd v. Pearson, 128 U. S. Reports, page 21; Coe v. Errol, 116 United States Reports, pages 517, 525, 527; Hammer v. Dagenhart, 247 United States Reports, pages 251, 272; United Mine Workers of America v. Coronado Coal Company, 42 Supreme Court Reports, pages 570, 583; Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 United States Reports, page 439; United States v. Patten, 226 United States Reports, page 525.

plaintiffs had interstate orders to fill, or that there was any conspiracy directed to an interference with the plaintiffs' interstate commerce, yet the majority opinion of this Court held that such intent and purpose could be implied from their acts, none of these acts—assuming them to have been done or perpetrated by the defendants—having been shown to directly affect the interstate commerce of the plaintiffs.

(12) That the majority decision of this Court is calculated to absorb not only the entire police powers of the State of Missouri, but a large part of the functions of the judiciary of the said state, and thereby violates the rights of these defendants (appellants) as citizens of the said State of Missouri under Arts. X and XI of the Amendments of the Constitution of the United States and under Section 2 of the Bill of Rights, Art. II of the Constitution of the State of Missouri.

(13) That the majority decision in this case is in conflict with the opinion of this Court in the case of Silverstein v. Local Union No. 280 of the Journeymen Tailors' Union, filed October 19, 1922, inasmuch as practically the same state of facts apply to both cases, and considered in connection with the opinion in the former case, the majority opinion in this case is discriminative against these defendants.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

Notwithstanding the carefully reasoned and able opinion of the majority of this Court in this case, we are still profoundly convinced that articles in process of manufacture or manufactured within the state, even though part or the greater part of these articles were contracted to be shipped in interstate commerce, can, in the light of the numerous decisions of the Supreme Court of the United States to the contrary, be held to form a part of interstate commerce so as to give to the federal courts jurisdiction, exclusive or otherwise, to determine controversies regarding such articles between citizens and corporations of the same state.

If an interference with interstate commerce can be legally inferred from any act whatever, where such act has the effect to create such interference indirectly, then we submit that it will not to any appreciable extent tax the ingenuity of persons seeking the interposition of the federal courts to the exclusion of the courts of the state to lay the basis for such jurisdiction by the mere assertion or averment in their petitions and the proof in the support of same that they are unable to fill their interstate commerce contracts because the parties on whom they sought to fasten the responsibility either did or neglected to do some act which had the effect of preventing the former from fulfilling such contracts.

Thus, if A be a manufacturer in Missouri and B, a resident of the same state, owes him a considerable

amount of money, and A needs that money to purchase materials or pay the help engaged in the production of articles intended or contracted to be shipped in interstate commerce, then upon a mere allegation that B, by refusing to pay him the money which he owes, has prevented him from fulfilling his contract to manufacture and ship the articles to customers outside of the state, A can (it seems to us), in the light of the opinion of this Court, assert an exclusive jurisdiction in the federal court of his claim against B for the money due.

And thus in a mere, simple contract of purely local concern and plainly detached from interstate commerce it is made possible in the enforcing of same for the party entitled to the benefit of the contract to seek his remedy in the federal court and to divest the state courts of the jurisdiction which properly belongs to them.

No matter how plausible the argument, or how well and closely reasoned the logic which leads to a condition of this sort, the condition itself is so plainly and violently at variance with the limitations imposed upon federal authority by the states, and so sweeping an encroachment upon the sovereignty and independence of the states themselves as to lead to the inevitable conclusion that the commerce clause of the United States is the death-trap of all state rights, and the whole scheme of our government system, epitomized in the declaration of an "indestructible Union composed of indestructible states" has been undermined and the authority of the states as independent sovereignties has passed to the centralized power, with all the disastrous effects which his-

tory teaches naturally and inevitably flow from centralization.

In the famous case of Texas v. White, 74 U. S. Reports 100 at 725 (7 Wall. 725), within short compass Chief Justice Chase has pointed out with a lucidity and directness that needs no elaboration the distinction between the rights of the federal government and the rights of the states under the Constitution of the United States in the following language:

> "Under the Articles of Confederation each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States under the Constitution are reserved to the states, respectively, or to its people, and it may be not unreasonably said that the preservation of the states and the maintenance of their government are as much within the design and care of the Constitution as the preservation of the union and the maintenance of the national government.
>
> "The Constitution in all its provisions looks to an indestructible union composed of indestructible states."
>
> County of Lane v. State of Oregon, 74 U. S. Reports, page 76,

and we can't help thinking that the principle of constitutional law above declared is securely embalmed in the decision of the majority of the members of this Court in the instant case.

To this we take leave to add that, in our humble judgment, the liberal interpretations given to the commerce clause in the early decisions of the Su-

preme Court of the United States were aimed at construing the Constitution as allowing to the national legislature that discretion with respect to the means by which the powers it confers are to be called into execution which would enable that body to perform the high duties assigned to it in the manner most beneficial to the people (McCulloch v. the State of Maryland, 4 Wheat. 316), but, as stated in Martin v. Hunters Lessee, limited this interpretation so as to preserve intact the powers that properly belong to the state in the following language:

> "The Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication."

Continuously flowing currents of interstate commerce may be in the descriptive sense a picturesque and beautiful metaphor, but as applied purely to the interruption of or interference with process of manufacture it cannot logically become the basis of any rule attempting to define the point where state control ends and interstate control begins. Upon the contrary, it will, in our judgment, lead to a confusion which will make it impossible to preserve the distinction, for confusion will always follow where any other basis of distinction is made in relation to state and federal control of goods than the rule supported by the great weight of authority and never departed from, at least, by the Supreme Court of the United States, and which removes every species of perplexity from the solution of this question, and that rule as an-

nounced in Kidd v. Pearson, 128 U. S. Reports, 120, 121; United States v. Knight, 156 U. S. 112, 113; Lenke v. Farmers Grain Company (decided February 27th, 1922), and the other authorities cited in the appellants brief is:

> "Goods become the subject of interstate commerce when they begin their interstate journey by a delivery to a carrier or otherwise by passing beyond state authority into the domain of federal control."

His Honor, Judge Stone, in his dissenting opinion in this case, stated that he could not concur in the views or conclusions reached by his associates because he thought controlling decisions of the Supreme Court are to the contrary. In this we humbly submit that he was right. Outside of the mere personal gratification of the advocate who finds his contentions upheld, we yield our respectful tribute of admiration to an effort worthy of the finest traditions of federal jurisprudence in the upholding of a great fundamental principle of our government, which if once abandoned will leave but a debris of what once was a great nation composed of free and independent states.

Impressed with the gravity of this decision as bearing upon the question of the relations between federal and state governments, the distinguished jurist has not only pointed out the disastrous effect which will inevitably flow from federal control of state jurisdiction, but has, in our humble judgment, irrefutably demonstrated the absolute lack of proof in this case that the object of the strike was to interfere with interstate commerce. In his opinion, we think we are

upheld upon the proposition that the proof of a conspiracy, its intent and purpose must be established either directly or by facts which indubitably point to its existence, and that it can never be inferred from the effect alone.

We, therefore, shall not be guilty of the impertinence of attempting to enlarge upon the matters and questions which he has so ably discussed, but rest our argument upon his opinion as the most logical and convincing reasons for the granting of this petition.

As counsel for the appellants of the above cause and in such capacity charged with the responsibility of its conduct in the trial court and in this Court, we respectfully disclaim having made the argument in any of these courts attributed to us in page 6 of the majority opinion, either in brief or orally, viz., "that the only purpose of the defendants was to force the plaintiffs to employ none but union men"; upon the contrary we pointed out in brief with all the emphasis that we could command (see page 83, printed record) "that not only was there no proof offered in the evidence of the existence of a conspiracy on the part of the defendants to bring about the 'closed shop' policy in the factories of the plaintiffs," but counsel for the plaintiffs objected to any evidence being given on the part of these defendants as to cause which led up to the strike (see page 167 of printed record), which objection was sustained by the trial judge as the basis of this ruling declared the defendants had the right to strike. (See page 84 of printed record).

We also respectfully submit that the statement appearing in the majority opinion, page 15, as a conclu-

sion of fact "that the defendants purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, and to grant other demands" could not have been accompanied with their intent and purpose to prevent, if possible, and if not to restrict their interstate commerce, was not based upon any evidence appearing in the record, as an examination of the pages to which we have just referred will show, nor do we think that the existence of such a purpose can even be logically held within the limits of the extended application of the doctrine of intent as defined in the majority opinion.

It is true that the bill of complaint of the plaintiffs charged the existence of a conspiracy on the part of the defendants for the avowed object of forcing the plaintiffs to adopt the "closed shop" policy, but it is equally true that not only did the plaintiffs fail to make any proof of the existence of a conspiracy for such a purpose, but strenuously objected to the defendants' attempt to show that no such purpose existed, and to this we will add that such purpose could not have existed, for the plaintiff prior to the strike were maintaining closed shops.

We respectfully call the attention of the Court to the fact that the proof of three essential elements of a conspiracy is missing in the present case. These are:

(a) The confederating—the combining together of two or more persons.

(b) The intent—for the purpose.

(c) The object—of doing something unlawful or oppressive or immoral as a means to an end.

Eddy on Combinations, Vol. I, Sec. 365, page 238.

There was no proof of any conspiracy on the part of the defendants, there was especially no proof of the purpose as stated in the petition on the part of the defendants to bring about the "closed shop" policy, and there was no proof of the objects of such a conspiracy, for that, too, was to bring about the closed shop policy, as alleged.

> "The intent is a vitally essential element. There can be no conspiracy without a purpose expressed or implied to do something unlawful, oppressive or immoral as a means to an end, and before parties can be convicted of a conspiracy the elements of wrongful intent must be as fully proven as the element of confederating."
>
> Eddy on Combinations, Vol. I, Section 369.

> "Whether the proof be direct or circumstantial it must show what was the purpose of the combination."
>
> Eddy on Combinations, Vol. I, Section 369, page 241.

It is but natural that the trend of the judicial mind should lean strongly against an interference with a control of their business by the owners of same. The great economic questions which underlie the relations of capital and labor are forgotten and the strictest and sometimes the harshest limitations are placed upon the rights of labor to organize and to protect its interest, and this probably is responsible for a laxity in the application of the rules of evidence which finds no precedents in other cases.

The appellants strongly objected at the trial of this cause to the introduction of testimony in support of the allegation of a conspiracy of persons not shown to

be affiliated with their organization, and whose names or identity were not even disclosed. The record teems with this sort of evidence. The impossibility of making a defense to this class of testimony is the most eloquent testimony to its unfairness.

> "It is fundamental that no evidence ought in strictness to be given by strangers to the record in order to effect the defendants until the fact of a conspiracy with them is shown."
>
> Greenleaf on Evidence, Vol. I, Section 92.

Most of the evidence offered on the part of the plaintiffs against these defendants was that of entire strangers to the record, many of whom were not named, and although the trial court ruled that this evidence should be connected up and that the defendants should be connected with it, yet such testimony in large part forms the basis of the majority opinion of this Court, that the defendants were guilty of the acts charged against them.

We understand that very recently, in the opinion not yet published, the Circuit Court of Appeals for the Seventh District has held in the case of Danville Local Union 115 of the United Brick and Clay Workers v. Granville Brick Company, where a similar state of facts as in the instant case existed, that interference with the manufacture of goods, although intended for interstate shipment, did not give the federal courts jurisdiction in an injunction proceeding.

We respectfully submit that a rehearing of this appeal should be granted.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

I, John P. Leahy, hereby certify that I am the solicitor and of counsel for the above-named appellants and petitioners; that I personally attended the taking of all the testimony in the above-entitled cause; that I have carefully examined the record, opinion and briefs therein; that I am duly authorized by the appellants to execute and present the foregoing petition for rehearing; that I prepared said petition and believe the statements therein made to be true; that I believe this Court erred in its decision as specified in the foregoing petition and that appellants have a just and meritorious cause for rehearing.

Dated this 9th day of December, 1922.

John P. Leahy,
Solicitor and of Counsel for the
Appellant Petitioners.

Suscribed and sworn to before me this 9th day of December, 1922.

My term expires February 22, 1926.

Harriet Cox,
(Seal) Notary Public.

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DEC 22 1923
WM. R. STANSBURY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al.,
Appellants,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Appellees.

No. 233

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANTS.

JOHN P. LEAHY,
Solicitor for Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66; A. M. REUTER, AL BIRKENMEIER, H. EHLENBECK, CHARLES KAYSING, JOHN SMITH, MICHAEL LITTLE, JOHN LECHNER, CHARLES MORGAN, PAUL BERRY, EDWARD SCHILLING, AMBROSE KINTZ, STEPHEN WILHELM, WALTER DECHANT, ESTHER BRADLEY, NORA WIELAND, MALLEY COLLEY, WALTER FLEHER, THOMAS HALLIBURTON, J. PERRY, JOHN REMSTEDT, CHARLES REUBEN, HENRY SCHNITZ, THEO SUMMERS, CHARLES TADESCO, FRED TENTSCHERT, RAY WATKE, WALTER WEBBER, JOHN ZIMMERMAN, HERMAN DIECKHORNER, JOE KUHN, WM. BALMER, ROBT. GINNER, TOM CAITO, FRANK CAITO, RUDOLPH KOOB, ANTON PAULEY, LEO PAULEY, ROBERT WARSING, STEVE ZOELLER, TONY SANSON, ANNIE STECKER, SYLVESTER SCHNITZ, GUS NENNINGER, GEORGE WENK and BENJAMIN SCHNITZ,

Appellants,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, P. C. MURPHY TRUNK COMPANY, a Corporation, JAMES A. QUIRK TRUNK COMPANY, a Corporation, STABILITY LEATHER GOODS MANUFACTURING COMPANY, a Corporation, and H. A. KOLB TRUNK & CASE COMPANY, a Corporation,

Respondents.

No. 878.

STATEMENT.

The plaintiffs (complainants) in the bill of complaint filed in this case are and were at the time the proceedings were instituted corporations of the State

of Missouri having their principal offices and manufacturing plants in the City of St. Louis, in the State of Missouri. At the time of the filing of the complaint and prior thereto they and each of them were engaged in the manufacture of trunks and leather goods and employed a number of persons engaged in that craft in the city and state above mentioned. The defendant Local Union No. 66 is a voluntary association affiliated with the United Leather Workers International Union and also had its offices and was doing business at the times stated in the City of St. Louis and State of Missouri. All the defendants named in the bill, except Edward Schilling, Henry Schnitz, Robert Worsing (who were not served with the process of the court, did not appear and were not therefore included within the scope of the injunction) and Al Birkenmeier, were employes of the various complainants and also members of the local union above referred to, and all the said defendants were and are citizens of the State of Missouri.

The plaintiffs had established an association of trunk manufacturers of which they each were members and through this association they had entered into a contract with Local Union No. 66 and the employes who were members of the union, in which the plaintiffs maintained what was known as a

"closed shop," that is, that all the employes engaged in the manufacture of the trunks and leather goods were members of the labor union.

A little while previous to February 28th, 1920, the term provided in this contract had expired and negotiations were entered into between the plaintiffs and the officials of the local union representing the employes of the plaintiffs for the purpose of arriving at a basis upon which fresh contracts might be made between them. These negotiations resulted in a disagreement between both parties, and being unable to obtain a renewal of their contract, the defendants named in the bill of complaint and served left the employment of the plaintiffs. A strike was called by the local union in the regular way, and in accordance with the rules and regulations of the union of which the defendants were members.

The bill of complaint averred that each of the complainants were engaged, and had been for a number of years, in the business of manufacturing trunks, leather bags and leather goods in the City of St. Louis, Missouri; that they, and each of them, had a large number of customers in various states and territories of the United States to which they had been shipping and would continue to ship in interstate commerce goods manufactured in their various factories; that they were receiving and would continue to receive orders to ship goods in interstate com-

merce; that their customers were demanding shipments of the goods and would cancel their orders unless same were shipped promptly; that they were receiving and would receive large quantities of raw material in interstate commerce and foreign commerce from which the said trunks and leather goods were manufactured; that in operating their factories they employed a large number of persons, both men and girls, many of whom were timid, young and easily frightened and who were anxious to continue in the service of the complainants. The bill further recited that the factories of the complainants were located in the City of St. Louis at the places specified therein.

That the defendants on the 28th day of February, 1920, and thereafter illegally determined that each of the complainants should, on the 1st day of April, 1920, enter into a contract with the local union by which they would consent to unionize their business and adopt what is commonly called a "closed shop" policy, by which it is alleged was meant the complainants would not permit to work in their factories as trunk makers any persons who were not members in good standing of said local union, and if complainants refused to accept the demands to ruin the complainants' interstate commerce business.

The bill further alleged that on the 10th day of April, 1920, the defendants, acting individually and

for and on behalf of the local union, unlawfully conspired with each other and various other persons to injure and destroy the business of complainants and to prevent the employes of complainants from continuing their said employment unless they would yield to the defendants' demands, and that the defendants had sought and endeavored to induce, force and compel, and did so induce, force and compel, the employes of the complainants to stop working for them, and that in pursuance of the conspiracy had inaugurated a strike against the complainants, and each of them, and that in further pursuance of the alleged unlawful conspiracy that they had assaulted, threatened and abused complainants' employes, and by following these employes to and from their homes and by the use of abusive language and boisterous conduct had so intimidated the employes as to force them to quit the complainants' employ against their wills, and thereby prevented complainants from engaging in and carrying on their said interstate commerce business and interfered with and obstructed the complainants in the manufacture and the shipment of the products of their various factories sold to be shipped in interstate commerce.

The bill further averred that the defendants, their associates and confederates, pursuant to the alleged conspiracy and with the intent to injure and ruin the business of complainants, and each of them, and in-

terfere with their interstate shipments, declared a boycott against the complainants and were prosecuting the same by the said unlawful methods.

The bill further alleged that the defendants, in pursuance of the unlawful conspiracy heretofore mentioned, had, since the inauguration of the boycott, kept a large number of men who by force of numbers menaced and threatened the employes or persons seeking to become employes of the complainants as to prevent them from entering the complainants' places of business for the purpose of destroying their interstate commerce, and to prevent the complainants from carrying out their contracts with their customers; that the defendants continued the mass picketing for the purpose aforesaid, and would continue to do so unless enjoined and restrained; that the defendants had caused, induced and coerced a large number of the employes of the complainants, against their will, to quit complainants' employment and were continuing to use the same methods for the purpose of forcing and coercing more employes to quit their said employment against their wills; that a large number of the employes who had been so forced out would return to their work just as soon as they could get protection.

The bill further averred that the defendants well knew at the time of entering into the alleged unlawful conspiracy that complainants, and each of them,

were engaged in interstate commerce and were receiving and would continue to receive in the ordinary course of their business large quantities of goods in interstate commerce; that the defendants by their unlawful acts maliciously obstructed and prevented the complainants from procuring the necessary help to receive and ship goods in interstate commerce, and that they declared that they would continue to do so unless the complainants accepted their demands.

The bill further alleged that the conspiracy hereinbefore set forth was in violation of the express provisions of the Sherman Antitrust Act, approved July 2, 1890, and of the Clayton Act, approved October 15, 1914.

The bill further averred that **the complainants controlled the entire business of manufacturing trunks and leather bags in the City of St. Louis, and that that result had been obtained by great labor and effort upon their part and at great expense** (Tr. of Rec., p. 7).

The bill further averred that the defendants had conspired to monopolize labor in preparing goods in complainants' line of manufacture, contrary to the interstate commerce clause in the Sherman and Clayton Acts, and that the strike was being conducted in direct violation of the provision in said acts, and the bill prayed for an injunction and an accounting.

On affidavits filed in support of the averments of the bill, a restraining order was issued by the District Court (Tr. of Rec., p. 23). The return to the rule to show cause was duly filed by the defendants (Tr. of Rec., p. 28), followed by the answer of all the defendants (Tr. of Rec., pp. 32-36, inc.) except the four who had not been served with a copy of the process, which answer averred that the bill of complaint did not state facts sufficient to entitle the plaintiffs to the relief sought nor to any equitable relief; that the allegations of the bill were indefinite, uncertain and stated no overt acts of the defendants or either of them in pursuance of the conspiracy alleged to exist. The said answer specifically denied the allegations of the petition and further set up that the complainants and each of them had unlawfully, wrongfully and intentionally conspired with each other to establish a **monopoly and trust** in the manufacture of leather goods in the City of St. Louis and to unjustly discriminate against the defendants who were members of the local union by seeking to compel them to accept certain agreements relative to their employment with the said complainants, which permitted unjust discrimination to be made against them, and that although the complainants had entered into an agreement with the defendants as their employes, which fully provided the terms under which the defendants should work, yet that

thereafter the complainants repudiated the said agreement and endeavored to force the defendants to sign another agreement which would permit such unjust discrimination to be made against them while in the employ of the complainants as members of the local union, and that because of the fact of such unjust discrimination they peacefully withdrew from the employ of the complainants.

The answer further averred that the complainants were corporations of the State of Missouri, and that all the defendants were citizens of the said state, and that the Court **had acquired no jurisdiction whatever over these persons and had no lawful power to proceed with the trial thereof,** or to issue **an injunction against them, or grant the equitable relief sought by the complainants.** The prayer was for the dismissal of the bill (Tr. of Rec., pp. 32-36, inc.).

A hearing was had before the District Court on the application for temporary injunction, oral and documentary testimony on both sides being offered.

Francis Leo Murphy, secretary and manager of the P. C. Murphy Trunk Company, for the complainants (Tr. of Rec., p. 83), testified that his company did a business which approximated a million dollars a year; that it employed two hundred and twenty-five men; that on the 10th day of April, 1920, the men walked out; that at that time the company had seventy-five thousand dollars worth of orders, most

of which, after being filled, would be shipped in interstate commerce. This witness testified, over objections, that he had seen some of the defendants doing mass picketing around his factory, and as the result of their picketing they were unable to get their goods out; that he observed no acts of violence, but that he had seen two men stopped as they were coming in; that all the trunkmakers in the employment of his company walked out and that they had lost approximately fifteen thousand dollars as a result of his employes going out on a strike. On cross-examination this witness testified that he had not heard any of the pickets talking to any of the employes working for the company; that all these employes who had gone on a strike were members of Local Union No. 66, and that his company was a member of the association of trunk manufacturers; that they had taken representatives of all employes from the various factories, together with the factory managers or representatives, so that they could combine together and see that the same conditions prevailed in every factory.

John A. Meisel, president of the Herkert and Meisel Trunk Company, for the complainants (Tr., of Rec., pp. 162-168, inclusive), testified that his company had been in business for thirty years; that it sold goods all over the United States and in Mexico and Cuba; that it had

done during the past year business approximating one million nine hundred and fifty thousand dollars, and that after the strike was called all the men walked out. This witness was asked this question in direct examination:

> "Q. Have you shipped your full amount of goods or any amount of goods since the 10th of April, in interstate commerce?
>
> A. No, sir.
>
> Q. What happened to prevent you from shipping your goods in interstate commerce?
>
> A. The men going out on a strike" (Tr. of Rec., p. 164).

This witness testified as follows on cross-examination:

> "Q. Now, to your knowledge, Mr. Meisel, there was no active interference of any kind on the part of any of these strikers with the shipping of your goods in interstate commerce, as far as you know?
>
> A. Only to stop the people as they were trying to enter our factory to go to work.
>
> Q. That is all. Whatever occurred there occurred at the factory itself and not outside of it?
>
> A. Outside of the building.
>
> Q. Well, outside of the building, say, but there was no interference with the delivery of freight to the depot or any other place where freight

is usually received for interstate shipment, was there?

A. Not that I know of."

James A. Quirk, president of the James A. Quirk Trunk Company, one of the complainants, testified that the investment of their company was fifty thousand dollars and their loss during the strike was fifteen thousand dollars. On redirect examination this witness testified as follows:

"Q. Mr. Leahy asked you if your wagons were interfered with. You say they were not. Was the manufacture of your goods to be shipped in interstate commerce interfered with?

A. Yes, sir" (Tr. of Rec., p. 170).

Harry A. Kolb, president of the H. A. Kolb Trunk and Case Company, one of the complainants, testified that he had between five and six thousand dollars of interstate commerce orders, and over the objection of the defendants, that his loss was four or five thousand dollars as the result of the strike. On cross-examination this witness testified that he had never seen anybody interfered with in going to or coming from his factory, and was asked this question and made this reply (Tr. of Rec., p. 174):

"Q. And you don't know that any of your men or your wagons engaged in conveying

freight of your manufactured goods, or output, to the freight depots or trains were ever interfered with——

A. No, sir.

Q. ——since the strike? You don't know of one single instance?

That is all."

H. M. Wilson, president of the Stability Leather Goods Manufacturing Company, one of the complainants, testified that he had seen men around the company's factory; that to his present knowledge none of his men had been interfered with coming or going to work; that he had about thirty-three thousand dollars interstate commerce orders at the time of the strike. On cross-examination this witness testified that there had been, so far as he knew, no active interference on the part of any of the defendants with any of his employes or the employes of the corporations, and that none of the wagons or the drivers engaged in the conveyance of the manufactured articles to the freight depots or other places had been interfered with (Tr. of Rec., pp. 174-179, inclusive).

The trial judge found that the strike was called after a fruitless effort to agree on terms pursuant to a vote taken in the regular way; that the calling of the strike was followed by the quitting of the plaintiffs' employment of practically all their employes; that picketing was maintained around their plants

and various illegal acts were committed; that these unlawful acts prevented the plaintiffs from employing other workmen to take the places of the strikers, so that the plaintiffs were unable to manufacture the goods necessary to fill their interstate orders; **that there was no actual interference with or hindrance of any interstate movement or shipment of the goods made by plaintiffs or by either of them for the very simple reason that the goods had never come into existence on account of the interference mentioned, for as forecast, these goods could not be manufactured because the plaintiff's former employes had quit and other workmen could not be obtained to manufacture them,** these potential workmen being kept away by picketing, threats and intimidation; that such goods as were actually made were shipped without let or hindrance in interstate commerce (Tr. of Rec., p. 48). The Court found from the acts of the pickets the existence of a conspiracy amongst the defendants, but the Court did not find the existence of a conspiracy for the purpose set forth in complainants' bill, i. e., to unionize the plaintiffs' shops (Tr. of Rec., p. 53). The learned trial judge was of the opinion as expressed by him in the foregoing decision that upon the pleadings and the facts in evidence and particularly because the goods of the plaintiffs had not come into

existence as manufactured products and were not shipped, and that there had been no interference with such goods as were manufactured and shipped in interstate commerce; **that he did not have jurisdiction over the defendants,** but felt himself constrained **to hold the opposite view in deference to the opinion of this Court in the case of Dowd v. Mine Workers,** 148 C. C. A. 495 (Tr. of Rec., p. 50).

The defendants (appellants) hereinbefore named, filed a motion for a rehearing of the application for temporary injunction which was overruled. The parties on both sides then agreed that the cause should be submitted for final hearing on the pleadings and the evidence adduced in the application for temporary injunction and at the conclusion of same the Court granted a permanent injunction against the defendants hereinbefore named and rendered an opinion which will be found at pages 46 to 53, inclusive, of the transcript of the record and in the appendix to this brief.

Thereafter, the defendants (appellants) appealed to the United States Circuit Court of Appeals for the Eighth Circuit, and the case was argued before and duly submitted to that Court, which in a majority opinion on the 21st day of October, 1922, rendered by Circuit Judge Walter H. Sanborn and acquiesced in by Hon. Thomas E. Munger, District Judge, the

judgment of the trial court was affirmed and a permanent injunction was granted against the defendants, a copy of which is hereto attached, marked "Appendix B" (Tr. of Rec., p. 321). A dissenting opinion was filed by Honorable Kimbrough H. Stone, Circuit Judge of the United States Circuit Court of Appeals for the Eighth Circuit, a copy of which is hereto attached and marked "Appendix C" (Tr. of Rec., p. 334). A petition for a rehearing in the United States Circuit Court of Appeals was filed by the defendants, a copy of which is also attached and marked "Appendix D" (Tr. of Rec., p. 345), in which it is set forth that the majority opinion was based upon the erroneous construction of the Sherman Anti-Trust Act; that it was erroneously based upon an argument, stated to have been made in the opinion, of counsel for defendants that the only purpose of defendants was to force plaintiffs to employ none but union men and to grant other demands, and a denial that such argument had been made; that the majority decision was based upon the erroneous presumption that such conspiracy existed amongst the defendants to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, there being not a particle of evidence in the entire record that the defendants entered into any agreement to compel the plain-

tiffs to employ none but union men. Nor was there any evidence in the record from which the existence of such an agreement for such purpose could reasonably be inferred; that the majority decision of the Court was in conflict with the decisions of the Supreme Court of the United States in the cases of Kidd v. Pearson, 128 U. S. Reports, page 21; Coe v. Errol, 116 U. S. Reports, pages 517, 525, 527; Hammer v. Dagenhart, 247 U. S. Reports, pages 251, 272; United Mine Workers of America v. Coronado Coal Company, 42 Sup. Ct. Reports, pages 570, 583; Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. Reports, page 439; United States v. Patten, 226 U. S. Reports, page 525; that the majority opinion of the Court misjudged and misinterpreted the decisions of the Supreme Court of the United States as applied to the facts of this case in the cases of International Text Book Company v. Pigg, 217 U. S. Rep., pages 91, 107; Dahnke-Walker Milling Company v. Bondurant, 42 Sup. Ct. Rep., 106, 108; United States v. Reading Company, 226 U. S. Rep., 324; United Mine Workers of America v. Coronado Coal Company et al., 42 Supreme Court Rep. 570; Northern Securities Company v. United States, 193 U. S. Rep., 197, 329; Addyston Pipe & Steel Company v. United States, 175 U. S. Rep., pages 211, 243; Duplex Company v. Deering, 254 U. S. Rep., 443, 463, 467,

468; Debs case, 158 U. S. Rep., 532, 581; that as averred in the bill of complaint and as shown by the record, the plaintiffs were corporations of the State of Missouri, and all the defendants were residents of the same state, and that the appellate court erred in holding that it and the trial court had jurisdiction of the case and averred that neither the trial court nor the appellate court under the law and the facts had any jurisdiction over the defendants; that the majority opinion of the Court was erroneous in holding that an intent to obstruct or interfere with plaintiffs' interstate commerce could reasonably be inferred from any acts or conduct of the defendants, and that such holding was unsupported by any evidence as shown by the record in the case; that the majority opinion was erroneous in holding that the manufacture of articles of the plaintiffs, contracted or intended, or normally going into interstate commerce constituted a part of interstate commerce, and that by reason thereof the trial court and the appellate court had no jurisdiction over the defendants in the case; that the majority opinion was erroneous in holding that there was any purpose on the part of the defendants to bring about any interference with interstate commerce as legally understood; that the majority opinion of this Court was violative of Article

IX and X of the Constitution of the United States in that it denied the rights of these defendants to a trial of their cause before the courts of the State of Missouri, of which they are citizens, and because it is an attempt to exercise judicial powers not delegated to the United States or its courts, but which are especially reserved to the State of Missouri and to its people by said Article X of the Amendments to the Constitution of the United States; that the majority opinion was erroneous in holding that the intent and purpose could be implied from the acts of the defendants, although there was not a suggestion in the entire record of the case that there was any actual intent upon the part of the defendants to affect or to interfere with the interstate commerce of the plaintiffs or any proof that the defendants knew that the plaintiffs had interstate orders to fill; that the majority decision of the Court was calculated to absorb not only the entire police powers of the State of Missouri, but a large part of the functions of the judiciary of the said state, and thereby violates the rights of these defendants (appellants) as citizens of the State of Missouri under Articles X and XI of the Amendments of the Constitution of the United States; that the majority decision in this case was in conflict with the opinion of the United States Court of Appeals for the

Eighth Circuit in the case of Silverstein v. Local Union No. 280 of the Journeymen Tailors' Un filed October 19, 1922, 284 Fed. Rep., page 449.

This petition was denied and the defendants thereafter filed their petition for appeal, which was duly granted to this Court.

As the trial court in its opinion and by and with the consent of the complainants deemed it essential to the proper determination of the case by the United States Circuit Court of Appeals for the Eighth Circuit, it was ordered that the entire testimony of the witnesses in the case taken at the hearing of the temporary injunction and submitted to the Court on the final hearing of the case as it was contained in the stenographic transcript should be reproduced in the exact words of the interrogators and witnesses, the same being in lieu of the narrative form provided for in Rule 10 of the United States Circuit Court of Appeals (Tr. of Rec., p. 81) and for the convenience of this Court we append hereto a brief summary of the evidence.

SUMMARY OF EVIDENCE.

The following is a brief summary of the evidence offered in support of the allegations of the bill:

Francis Leo Murphy, secretary and manager of the P. C. Murphy Trunk Company, for the appellees (complainants) (page 83, Printed Rec.; page 117, Original Rec.), said his company did a business which approximated a million dollars a year; that it employed two hundred and twenty-five men; that on the 10th of April the men walked out; that at that time the company had seventy-five thousand dollars worth of orders, most of which would, after being filled, be shipped in interstate commerce; that the men started picketing the plant after they walked out.

An objection was made to this testimony on the ground that unless the evidence showed that the defendants themselves were engaged in the act claimed to be unlawful, they would not be bound by the acts of other persons.

> "The Court: Of course, it must be connected up; these defendants must have been shown to have been connected with in in some way, either by virtue of a conspiracy or something of that sort. I will hear it and consider it or not after I find whether it has been connected in the proper way."

The witness was asked if he knew a number of men whose names were read out to him. He stated he did, and identified one of the defendants, Reuter, as belonging to the local union; that he had seen some of these men about his factory doing picket duty; that he saw from one man up to sixteen; that they would be around all day; they would be congregated in the evening.

"Mr. Leahy: I object to that kind of examination; I think it ought to be shown the specific dates on which the picketing was done, and the number of pickets that were present; that would only be fair to us.

The Court: You may get that matter in cross-examination.

Mr. Leahy: **In addition to that, most of the parties named here, with the exception of one, are not defendants in this case. I take it that this testimony will be admitted subject to the objection I have already made, if your Honor please. I don't desire——**

The Court: **Oh, yes.**

Mr. Holland: We have under the law, I think, until the final adjudication of this case; we have until then to bring them in if we want to, and they were all served with the notice, with your Honor's order——

Mr. Leahy: That is not the point I am referring to. I am representing the men that have been brought in here now, and, of course, no evidence of what any other person does or says

can affect the status of these defendants before the Court except they be, as your Honor indicated, connected with it in some way, by conspiracy or otherwise.

The Court: **They will have to be connected with some sort of conspiracy, of course; but the case is very, very young.**

Mr. Leahy: I don't want to take up the time of the Court unnecessarily, but I want my record made up and taken as made to all this testimony until the matter is connected, and then, at that time, if it is not connected——

The Court: It will be so considered. Proceed" (Printed Rec., p. 88).

He saw two men stopped by L. Berg and another man was stopped by Louis George; these men were on Fourteenth street; he further stated his company had lost approximately fifteen thousand dollars by the strike.

On cross-examination (Printed Rec., p. 92) the witness testified his factory had a frontage of 300 feet; that continuously during the strike there were three or four men doing picket duty; that he did not hear what Berg said to the men he stopped; that the contracts with the men had expired; that all the men that left the employment were members of the union; that they had an association of trunk manufacturers here, of which the plaintiffs were members.

The Court here intimated that it made no difference whether a combination existed amongst the manufacturers, they had a right to strike, and the only question he would consider was whether they behaved thmeselves after they went out on strike.

The witness further testified there was no interference with the shipment of the products of his factory (Printed Rec., p. 99).

Frank Mees, superintendent of Herkert & Meisel Company's factory, testified for the plaintiff (Printed Rec., p. 99; Original Rec., p. 140) there were 275 men employed in the factory. The picketing began on Monday morning as the men failed to report for work; that he had seen about fifty close to the factory; he saw them follow persons up and down the street, tap some of these and talk to them. Witness was asked if he knew a number of men whose names were read to him. He said about two or three belonged to the local union; that all the men that worked in his factory belonged to the local union.

On cross-examination Mr. Mees said that his factory covers about 150 feet frontage on Chestnut street; that nobody went to work on Monday, when the strike was declared, and that it was two weeks after the declaration of the strike that they secured any people to work; that on Monday there were three pickets, and sometimes there were ten in the

evening; that these were 125 feet to the west and some others about 225 feet to the east of the factory; that he did not know who these men were, and he did not see them do anything; that he never counted the number of these pickets; that he did not know where the office of the Leather Workers' Union was, but it was in the vicinity of his factory. He did not know where the meetings were held of the union and whether people congregated for the meetings. The people that were near the factory were all of the block; that Twelfth street is one of the principal thoroughfares in St. Louis and is as extensively used as any street in the city, but he saw Nora Wieland stopping an employe coming out; that he was 100 feet away at the time and saw her stop and motion with her hand, but did not hear what she said; that he did not see any violence of any kind.

On redirect examination the witness heard a number of names from the bill of complaint, some of whom he said were present doing picketing. He said thirty-two of these were doing picketing at various times.

Edward Potts (Printed Rec., p. 110; Original Rec., p. 156), an employe of the Quirk Trunk Company, stated on direct examination he was stopped by two men, Charles Morgan and Paul Berry, on Monday when the strike was declared; that he said to him to come out, that there was a strike on; that he told

them he had charge of the floor and he didn't think he was compelled to come out, and they said, "If you want to be a scab go ahead and work." The witness testified he was still working there. On cross-examination Potts admitted he was a member of the union at the time Berry spoke to him; that he only observed two pickets around the premises of Quirk Trunk Company; that these men were defendants Berry and Morgan; that Morgan said nothing. We quote the following questions and answers from the cross-examination of Potts (Printed Rec., p. 112):

> "Q. You were a member of that union at that time?
>
> A. Yes, sir.
>
> Q. And Berry said to you, 'Don't you know that there is a strike on?'
>
> A. Yes, sir.
>
> Q. And that was all that occurred, was it?
>
> A. Yes, sir; that was all that took place."

On redirect examination this witness testified that he knew a boy named McCommis and that defendant Morgan stopped this boy, who was working for Quirk, and told him he had better stay out, and that Morgan went down to the house of the boy's father and told him and his mother that they had better keep him at home or he might get his head knocked off. On recross-examination this witness testified

that Morgan did not talk to McCommis when he came into his father's house, and that the remark regarding his head being knocked off was made in the course of a conversation with his father; that he had never mentioned the matter to anybody (Printed Rec., pp. 114, 115).

Herman McCommis testified that he worked at Quirk's trunk factory; that the defendant Morgan followed him to his father's house and told his father and mother that they had better keep him away or he would get his head knocked off. This witness testified on cross-examination that it was about the 17th of December that Morgan went to his father's house (the strike took place on April 10th following) (Printed Rec., pp. 116, 117, 118). The witness testified he was at work at the time of the hearing.

Arch Zilch, for the plaintiffs, testified he was superintendent of the James A. Quirk Trunk Company; that he saw Potts and McCommis and three or four girls stopped by Morgan and Berry, who told them that there was a strike on and they had better not go back to work, and the next day they all stayed home. On cross-examination this witness testified that the boys to whom Morgan and Berry spoke were members of the union (Printed Rec., pp. 121, 122).

Robert Webber, for the plaintiff, testified that a man named Dickorner, who was a polisher in the

factory of Herkert & Meisel Trunk Company, in which he was foreman, was doing picket duty and a number of the other defendants who were members of the union were doing picket duty around his factory; that Dickorner didn't interfere with anybody, but made a remark about some man working in the factory, that he would like to get his hands on him. He admitted that the man did not hear the remark (Printed Rec., p. 124).

On cross-examination the witness testified that the remark made by Dickorner was the only incident of violence that he had observed during the strike, and that he had frequently come out to the street to see if any violence was offered to the employes. Webber testified further to having made an affidavit filed in the case which contained the statement that a large number of men had congregated around the factory during the strike who had endeavored to frighten and intimidate the would-be employes of the company by threats, force of numbers and grimaces, but that he knew nothing of this to his own knowledge, but he made the statement on account of one woman who worked there and told the pickets had threatened her; that he never saw anyone making grimaces or faces at anybody going to work or coming from work at his factory (Printed Rec., pp. 124-129).

On redirect examination witness testified that the attitude of the strikers who were picketing the fac-

tory resulted in tying it up so that the company was unable to fill its interstate orders (Printed Rec., p. 129).

Olive Ruby, for the plaintiffs, testified she worked at the factory of the Herkert & Meisel Trunk Company and that a lady outside of the factory stepped up to her and said she did not want to catch her at work at the factory again; that she did not know the woman and had not met her before, and that she told her she did not want any trouble, and that she stayed home for a week, after which she returned to work (Printed Rec., p. 131).

On cross-examination this witness testified that the woman said there was a strike on and she should not go back to the factory again; that somebody had called her a scab; that a lady and gentleman passing by the factory said she was going to beat our ears off. She stated that outside of the woman who had laid her hands on her shoulder, there was nobody touched her. She admitted making an affidavit that, commencing about the 24th of April, she was violently assaulted and called indecent names by a number of persons who were doing picket duty around the factory, but that nobody had assaulted her, and that she had gone back to work at the factory (Printed Rec., pp. 131-134).

Dorothy Lewis, for the plaintiff, testified she worked at the Herkert & Meisel Trunk Company, and that she met a woman at the corner of Thirteenth and Market streets who told her she should not work there, and if she did she was going to take her out and give her a good beating, and that she told her she mustn't scab, and that she had met another woman and challenged her to fight, and she said she didn't want to fight; that she was spoken to by a man who called her an indecent name (Printed Rec., pp. 135 and 136).

This witness, on cross-examination, said she was hired after the strike; that she was not a member of the union; that she knew none of the parties that spoke to her, and that she was not bothered at the factory, and continued to work there (Printed Rec., pp. 137 to 139).

Joe Russell, for the plaintiff, said he met a man named Stinson at Twelfth and Chouteau avenue—a block away from the P. C. Murphy Trunk Company's factory, where he worked, who called him a scab. On cross-examination he said he did not know whether or not Stinson was a member of the union, but that he went out on strike (Printed Rec., p. 142).

James Lawrence, for the plaintiff, said he worked for P. C. Murphy and was stopped by four men, who

told him he would get what was coming to him, and used a curse word.

On cross-examination witness said he met the men a block away from the factory, and did not know any of their names (Printed Rec., pp. 143 and 144).

Chester Thompson, for the plaintiff, said he worked for the Murphy Trunk Company; he said he met some people who were doing picket duty, and they said that eight hundred were coming down there and would beat something out of him.

On cross-examination the witness said he did not know the men, or whether they were members of the union. He said they were boys of fifteen or sixteen (Printed Rec., pp. 145 and 146).

Annie Bradley, for the plaintiff, said she worked at the Murphy plant, and was stopped by three men and one of them asked her if she did not know that there was a strike on, and she told him she did, and he cursed her about working there.

On cross-examination the witness said she did not know the men or whether they were members of the Leather Workers' Union (Printed Rec., pp. 146, 147 and 148).

Dewinis Chocalas, for the plaintiff, said he worked for Herkert & Meisel and met some men who told him to get off the work and not to come back any more.

On cross-examination the witness stated he did not know any of the men who spoke to him; that they had told him there was a strike on, and he should quit (Printed Rec., pp. 150 and 151). He said he did not know any of the men who spoke to him, or whether they were members of the union; that he had been continuously working since the strike; that outside of the two occasions he had mentioned nobody spoke to him, and he was not interfered with as he went and came from work; that the men had told him there was a strike on and that was all.

Al Birkenmeier (Printed Rec., p. 152), for the plaintiff, said he was the business agent of Local 66 of the United Leather Workers' Local Union; that the local conducts all strikes; that he personally had nothing to do with the conduct of the strike which was being conducted by the executive board and committees; that the international had nothing to do with local strikes; that he knew John Stinson, and he was a member of the local; that the committee in charge of the strike was Ehlenberg, Kaysing Smith, and Burns and Walmen; that the picketing was voluntary on the part of those who participated in it; that they didn't expect any more than two men for each shop, or three; that he didn't know how many men were picketing during this strike, for the reason it had nothing to do with him, he did not pay

the pickets. Shown a list of names, and said, with the exception of two, Sanders and Rehan, they were members of the union.

On cross-examination this witness testified that ninety-nine per cent of the trunk makers that walked out at the time of the strike were members of the Local Union; that the contract of the plaintiffs with these men had expired; that there were some negotiations carried on between the representatives of the employes and the employers and they failed to reach an agreement; that after the failure to agree a vote was taken by the members of the union in the regular way and in accordance with the rules of the organization and the vote was carried by a majority deciding to strike; that the instructions given to the pickets were to stay away from all trouble, and not to resort to any violence; that the witness had nothing to do with instructing the men on strike.

Birkenmeir was recalled by the plaintiffs and examined relative to the financial condition of the union and the defendants. He testified it had two thousand dollars and none of the defendants would be good for a judgment of twenty or thirty thousand dollars.

John A. Meisel. That he was president of the Herkert & Meisel Co.; that the corporation had done a business of nearly a million dollars during

the year; that it shipped its goods all over the United States and Canada. The witness was asked the following questions and made the following answers:

"Q. Could you give the Court, approximately, the amount of your loss? I don't mean to the dollar at all——

A. Since then up to the present time?

Q. Yes; by reason of the fact that you were not allowed to ship in interstate commerce?

Mr. Leahy: That is objected to for this reason; that there is no evidence up to the present that there was any attempt on the part of these defendants to prevent interstate shipments whatever. On the contrary, the evidence shows directly the opposite to that.

The Court: I will hear it and determine it for you later; I overrule the objection for the present.

Exceptions to the ruling of the Court were duly saved.

Q. What happened to prevent you from shipping your goods in interstate commerce?

A. The men going out on strike.

Mr. Leahy: I move that answer be stricken out. The men had a just right to go out on a strike. They had a perfect right to go out.

Mr. Holland: That is admitted, but there is evidence here——

Mr. Leahy: One moment. They are not responsible for any loss that might arise from any action taken by them which was perfectly legal;

they are only responsible for such loss as was caused by any illegal conduct—if their conduct was illegal, and that is a condition precedent to the fastening of liability upon them for what might have ensued. Suppose these men left the factory and injury ensued as a result of that; they wouldn't be responsible for any of these injuries.

The Court: Yes, in the main that is absolutely true. The plaintiffs here cannot charge up against the defendants any loss even in interstate commerce which accrued from the mere fact that the men quit and went out and as a consequence thereof they were unable to get other men to take their places; unable to fill their interstate orders, or to make goods, rather, with which to fill these orders and therefore a loss ensued. Any loss arising from these things cannot be charged up against the defendants in this case. Whether the two things cannot be tied together by the presence of a conspiracy (if I should find there was one) is wholly a different question. That is the only theory on which evidence of this kind is admissible. Other things being equal, in short, the defendants here cannot be charged up with any loss which occurred merely from the fact that they quit, and that by reason of their quitting the plaintiffs did not have enough hands to make the goods to fill their interstate orders. There may be something left in the case, of course, upon the question of conspiracy. I will look into that question for you. The men had a right to

strike with or without excuse. I will admit it now with the thought that I have stated in my mind."

Some further questions were asked the witness relative to advertising for help, which the witness said they couldn't get, because they were kept out by the pickets. The objection to this was sustained on the ground that it called for a conclusion. He also stated he could get men enough to stay in and operate his factories.

This witness' testimony, direct testimony, will be found at pages 162 to 166, inclusive, of the printed record.

On cross-examination Mr. Meisel testified that he went to the factory every day; that he never saw outside or in any part of the factory any violence, only that the men were stopped; that he was never stopped himself; that he saw some persons stopped, but did not hear what the parties that stopped them said; that all the men—he understood that quit—were members of the local union; that they were under no contract to work for his company—the contract having expired.

"Q. And it was because of the failure of the negotiations which you and the other trunk makers associated with you in your combination had with the United Leather Workers that this strike occurred?

Mr. Holland: I will object to that; that is not the issue; it does not traverse any allegations in the main bill at all as to what these people did.

The Court: Yes; I don't care why they quit. All I am interested in is what they did after they quit.

Mr. Leahy: Then, we will arrive at this conclusion: That these men were justified in quitting and going out on strike. I am satisfied with that admission from Mr. Holland and I will not proceed.

Mr. Holland: We are not trying to enjoin them from being on a strike; they had that right.

Mr. Leahy (Q.): Now, to your knowledge, Mr. Meisel, there was no active interference of any kind on the part of any of these strikers with the shipping of your goods in interstate commerce, as far as you know?

A. Only to stop the people as they were trying to enter our factory to go to work.

Q. That is all. Whatever occurred there occurred at the factory itself and not outside of it?

A. Outside of the building.

Q. Well, outside of the building, say, but there was no interference with the delivery of freight to the depot or any other place where freight is usually received for interstate shipment?

A. Not that I know of" (pages 166 to 168, inclusive, printed record).

James A. Quirk, for the plaintiffs, testified that he was president of the James A. Quirk Trunk Company. The investment of his company was $50,000;

that his loss since the strike was twelve or fifteen thousand dollars; that he saw two men named Berry and Morgan picketing his place and didn't know anything of their financial circumstances (168 and 169, printed record).

On cross-examination Mr. Quirk said he visited the factories two or three times a week; that he never saw any of his employes being interfered with.

On redirect examination the witness stated that the manufacturer of his goods to be shipped in interstate commerce was interfered with (same page).

Harry A. Kolb, for the plaintiff (page 170, printed record), said he was president of the H. A. Kolb Trunk & Case Co.; that his factory was picketed after the strike; that he knew two of the pickets, Teuschert, Peters; that they could not get any help; the money value of orders that he had for shipment in interstate commerce was between five and six thousand dollars; that his loss was four or five thousand dollars.

On cross-examination (pages 172, 173 and 174, printed record), Mr. Kolb stated that he understood all the leather workers in his employ were members of the local; that he attended his factory every day and was there most of the time; that he was not interfered with, nor had he seen any other person interfered with in going or coming to his factory; that he had gone out frequently in front of his building

during the strike to make observations and had seen nobody interfered with. That he did not know of any of his men or wagons engaged in conveying freight or his manufactured goods or output to the freight depots or trains being interfered with.

H. M. Wilson, for plaintiffs (page 174, printed record), said he was president of the Stability Leather Goods Manufacturing Company; that his men quit and he couldn't get any more; that they stood around the street and seemed to be talking matters over about a block from the factory, one and two and three in groups; that he saw Deschant, Wilhelm and Kuntz, and that he never saw more than three at a time; that he had no direct knowledge of whether they interfered with anybody; that his investment was over thirty thousand dollars; that he had orders amounting to over thirty-three thousand dollars for interstate shipment.

The objection to this latter testimony was overruled by the Court, the Court intimating he would consider the question of loss in connection with the orders received.

On cross-examination Mr. Wilson testified that all the men that left his employment were members of the local union, that he visited his factory every day, spending eight or nine hours there; that he

never was interfered with or saw anybody interfered with.

"Q. Have any of your wagons or drivers been interfered with by these defendants in conveying your manufactured articles to the freight depots or other places?

A. No.

Q. So, as far as that aspect of the case is concerned, there has been no active interference with the delivery of your goods outside of the fact that these men have quit their work?

A. No.

Q. I mean the delivery of your goods, to freight depots or for interstate commerce?

A. No, sir (Printed Rec., p. 178.)"

By Mr. Holland:

"Q. When you say that there was interference with your business, you mean there was interference with the manufacture of your goods to be shipped in interstate commerce?

A. Yes."

On cross-examination, this witness testified that he did not recall the exact time that the contract with the employes and members of the Union had expired. Asked if it was not the fact that the employes of the corporation who were members of the

Local Union offered to continue work under the same contract which they had signed for the previous year:

> "Mr. Holland: That is objected to.
> The Court: **I shall sustain that objection. I will assume that they had the best reasons for quitting.**"

Clara Grimm (Printed Rec., p. 179), witness for the plaintiffs, testified she worked at the Stability Leather Goods Company; that she was spoken to by Steve Wilhelm and John Bosh (not defendants herein); that she met them when she was coming from work at Fourth and Chouteau; that they asked her from where she was coming, and she said from work, and she had been working at the Stability Leather Goods Company; then they said that she should think it over; that her boss would think the same thing of her if she would leave him the same way some day. They asked her if the strike was over, and she said she didn't know; that they advised her to go up to Mr. Birkenmeier's office and see if the strike was over.

The witness, on cross-examination, testified that she was not interfered with.

Amanda Berger, for the plaintiffs (Printed Rec., p. 182), testified that she worked for the Stability Leather Goods Company; that Ambrose Kuntz, Stephen Wilhelm and John Bush (for the defendants)

stopped her and asked her if she was going to work, and she said no, and they said they did not think that she would go back and put disgrace upon her children. That conversation was about one block from the factory. That they told her if she went back to work they would have those who went back to work kicked out.

On cross-examination (Printed Rec., p. 184), the witness testified that she was a member of the Local Union and was present at the meeting when the strike vote was taken, and agreed to go out with the rest. That the men who spoke to her said she was violating the laws of the organization, and that was the substance of the conversation with them; and that she continued to work and was not interfered with in any way.

On further cross-examination this witness (Printed Rec., p. 186) said the statement made in her direct examination that the three men said she would disgrace her children was wrong, and only Mr. Kuntz had made that statement.

Frances Hardy, for the plaintiffs (Printed Rec., p. 187), testified she was employed at the Murphy Trunk Company, and she was stopped by three men at Twelfth and Chouteau avenue, but she did not know any of them; that they asked her if she was working at Murphy's, and she told them yes; and

they said she was scabbing and would fix me on Saturday night; they would take my money——

> "Mr. Leahy: I object to this testimony for the reason that it is not shown that these defendants had anything whatever to do with the stopping of this boy. The names are not given. We don't know whether they belonged to this Local or not. As far as we know now, these men were absolute strangers and the defendants should not have to shoulder the responsibility of any statement made by an outsider."

The Court will hear it and determine it later.

The witness further testified that she noticed three men around close to the factory; that on May 27th she met another man at Thirteenth and Chestnut streets who asked her if she was going down to Murphy's to get work, and she told him she was looking for work there and was going home because she was sick, and he said he did not want me around any longer, as I was scabbing, and then he said, "These sons of b—— up there all think it is an open shop."

On cross-examination Hardy testified (Printed Rec., p. 190) that he was a member of the local union, and went to work at the factory May 17th; that he did not know the men who spoke to him; that they were absolute strangers to him.

Forest Easley (Printed Rec., p. 192) said he was employed at the Murphy Trunk Company; that he met a man on Papin street, between Thirteenth and Fourteenth streets, who asked him if he knew there was a strike on; he told him that we are going to have a meeting Friday; we are going to know you guys' roof in Friday. He met this man about 450 feet from the factory. The witness further testified that he met two fellows on the street car when he was coming back from work, and they asked him if he knew there was a strike on; and then he saw these men outside the engine room and one of them was the defendant Colley. On cross-examination the witness testified (Printed Rec., p. 194) that he had never seen any of the three men since they had spoken to him. On redirect examination (Printed Rec., p. 195) the witness said he noticed a number of men at Thirteenth and Chouteau who stood there at the time; there were about twenty-five to thirty men in the crowd.

Recross-examination (Printed Rec., p. 195): The witness testified there was a lodge hall at Thirteenth and Chouteau where this crowd was assembled and the Yardmen's Association met there, and lots of people frequented the place.

Henry Kelly (Printed Rec., p. 197), for the plaintiff, testified he was employed at Murphy's and there

was a man at the corner by a saloon about one block from Murphy's factory, who asked him if he was working at Murphy's; he asked if I knew the place was on a strike, and told him that the gang around there was liable to beat hell out of him; that while he passed by a saloon at Thirteenth and Chouteau he was stopped by a man at the saloon door and told him to beat it; he asked him if he was working at Murphy's, and said, "Why don't you give us poor fellows a chance?" He said, "You have a chance, why don't you do it?"

On cross-examination this witness testified that he did not know any of the men that stopped him; and he never seen him doing picket duty; and that he didn't know if he belonged the local union.

Alexander Dodd (Printed Rec., p. 200) testified that he was a salesman for the Herkert & Meisel Trunk Co., and that he saw a great many strikers standing around the factory at Thirteenth and Chestnut, and that he had seen one woman doing picket duty; and that she was promenading with two other men. The lady saw another man and himself coming out—the man did not see them and she touched him on the arm and said, "Those two fellows came out of there," and he turned around and said, "You bastard, come out of there"; that he referred to the * * * he supposed; that he had counted 23 pickets around the Herkert & Meisel Co.

On cross-examination (Printed Rec., p. 202), Dodd said he did remember that he saw the 23 men; that they were standing at Thirteenth and Chestnut and that the factory was located at Thirteenth, running up to an alley; that there were three men at the corner of Thirteenth and Chestnut streets; there were four groups of four men each and one group of three. He never saw anybody interfered with himself.

Martin Nolan, for the plaintiff (Printed Rec., p. 204), said he worked for the Murphy Trunk Company, and was stopped at Thirteenth and Chouteau by a man who asked if he knew a strike was on, and he told him it was kind of bad to work there, as he might get hurt; and that he was stopped about the middle of the block by two men who told him the same thing.

On cross-examination (pages 205-206) the witness testified that he had never seen the men who stopped him before, and that he never seen them doing picket duty, and the men had simply said to her that he was liable to get hurt if he worked in the factory.

This was the entire testimony offered for the plaintiffs.

Herman Ehlenbeck, for the defendants (Printed Rec., p. 208), testified he worked for the P. C. Murphy Trunk Company, and had been working there for three years; that a strike vote was taken on the 10th

of April; that he left the employ, and all the men who left with him on the strike were members of the local union, or lodge No. 66 of the United Leather Workers' International Union No. 66; that all the members were notified to be present at the meeting when the strike was declared; that he was chairman of the executive board of the local; that this committee examined the action of the organization and active as adviser to the organization; and that they were voted to act in conjunction with the committee; that neither he, or did any members of the committee, knew of any act of physical violence or any threats made by anyone of the local organization; that the nature of the instructions were at all times to stay away from violence, but if they thought they could use peaceful persuasion, why, they were at liberty to do so; that he never heard of any violence used in the strike.

On cross-examination (Printed Rec., p. 210) the witness testified that he, Kaysing and John Smith (who had recently died) composed the three men of the local strike; that he had charge of the strike. He further stated that there were no pickets appointed by the organization; that he did not visit the factory of the plaintiffs, but was near the Murphy factory, because the headquarters were at Thirteenth and Chouteau avenue; that no pickets were paid; that the organization paid a strike benefit; that he saw men standing at the corner of Twelfth and Chouteau

avenue after the meeting; that there was a saloon there; and that it was one block from the Murphy factory; that it was the business headquarters of the local, around the Herkert & Meisel's factory; that no reports were made to him relative to any picketing; that he had passed by the factory of the Herkert & Meisel Trunk Company, but had never seen any of the members around, and did not know if it was picketed.

On redirect examination the witness testified that members of the organization congregated at Tenth and Chestnut streets after meetings, and that in going from the hall at Chestnut street to the headquarters they would have to pass by the factory of Murphy's. The headquarters were at Thirteenth and Chouteau avenue; that a number of men congregated at Thirteenth and Chouteau, outside of the meeting hall and the saloon at the opposite corner, and that about one block from the P. C. Murphy Trunk Company.

Charles Kaysing, for the defendants (Printed Rec., p. 213) said he was employed by the P. C. Murphy Trunk Company, and was and is a member of the United Leather Workers' International Union, and was also a member of the executive board; that there was never any action taken with reference to the picketing of establishments; that during the intervals of the strike he was acting as chairman, and ——

of those who did volunteer picket duty were instructed by him to stay away from violence of any kind; that he was around the factory; he never saw or heard of any violence offered to any during the strike; the only violence that he knew of is that his desk was broken open, and a desk broken open and searched; that there was a sum of $125.00 in the desk that was not taken.

On cross-examination (Printed Rec., p. 217) Mr. Kaysing said the names of the men who volunteered for picketing duty he could not mention, but there was a man named Colley, who was replaced by Thomas Halliburton. At P. C. Murphy's there was L. Berg, Nic Paul, and later on Harry Laskowitz. At the Stability Company there was Ambrose Kuntz, and there was one instance where a woman volunteered, he did not remember her name. He saw her present at court, and stated her name was Esther Bradley. Nora Wielandy was also present at the meeting. Mr. Birkenmeier was not a member of the executive committee. **Previous to the strike they had a committee appointed that had been negotiating with the firms regarding a settlement. This committee was to act in conjunction with the executive board in handling the strike, and that idea was in existence, there being seven members.** Originally he testified that Otto Kaufman picketed at Herkert & Meisel, and that Birkenmeier did not picket. He

didn't know if Charles Morgan or Paul Berry were members of the organization, and that Ambrose Kuntz was picketing. He did not know Wilhelm to volunteer. Kuntz was in charge of the Stability. Kaufman was in charge of Herkert & Meisel, and nobody in charge of Quirck; Leonard Burg in charge of Murphy's; for the past three weeks they had no pickets; that he did not know Walter Dechant, J. Perry, John Remstedt, Charles Ruben, Henry Schnitze, Theodore Summers or Charles Tadesco.

The witness further testified relative to various names mentioned to him as pickets, who he did not know; that reports were received once in a while in regard to what happened at the various factories; that he was every day in the vicinity of P. C. Murphy's factory, but not in the picket line.

On redirect examination the witness testified (Printed Rec., p. 225) that Schilling was vice-president and general organizer of the International Union; that his health was very bad, and was present when the strike vote was called at the meeting, but had taken no further interest; that as picket chairman he instructed the pickets to stay away from violence and threats or abuse of any kind. He told them it would hurt their cause more than it would do it good.

A. M. Reuter, for the defendants (Printed Rec., p. 226), testified he was chairman of Local No. 66, and

held that office, and presided at the time the strike vote was taken; that instructions were given to the volunteers for picket duty—was to not cause any trouble, and to go about everything as peacefully as they could.

This witness testified he never spoke to any of the employes with reference to their leaving their employment; that he never entered into any sort of combination with anybody to injure the business of plaintiffs; that meetings were held at Thirteenth and Chouteau, and the men and women remained outside and congregated and discussed matters over amongst themselves.

On cross-examination the witness testified (Printed Rec., p. 228) that meetings were held at noon; that he knew Kuntz and Rehan, but never ran across them on the picket line; that he was not in charge of the picket line; that there were about 550 or 600 present at the meeting when the strike vote was taken; that he asked for volunteers to do picket duty, and several offered, including L. Berg; that he gave general instructions to the members with reference to their conduct during the strike.

On redirect examination (Printed Rec., p. 231) the witness testified that several unions met at Chouteau and Thirteenth street and congregated around there after their meetings.

Michael Litke (Printed Rec., p. 232) testified he was a member of the local union; held no official position, but was just acting as a committeeman during the strike; never heard of any violence or threats of any kind being resorted to by any of the members of the organization; that the Switchman's Union and Bakers and Garment Workers meet at this hall. On cross-examination this witness testified that he was always in the neighborhood of Thirteenth and Chouteau avenue from three to five hours every day during the strike; that he was never captain of the picket line, but did not know if anybody going or coming from work at Murphy's was interfered with; that nobody brought any information to Mr. Litke that pickets had been breaking the law.

John Stetson, for the defendants (Printed Rec., p. 236), said he was a member of the Local Union when the strike was called; heard the officers instruct the men not to use any violence, or anything like that; to be peaceable, at the meetings; said he had trouble with a man named Russell one year previous to the strike; that he had seen him on Chouteau avenue and never tried to intimidate him; when he saw Russell on Chouteau avenue he appeared to be drunk, and Russell was a drinking man; that they had to fire him every three or four weeks because they could not depend upon him; he was drunk; that he had

never entered into any combination with anyone to disturb the business of the plaintiffs. On cross-examination this witness testified that Russell was an habitual drunkard; that he had worked side by side with him; that he was in the Justice's office at Twelfth and Chouteau and saw Russell getting off the car and saw him stagger, that directed by attention to him—there were three or four other people and he was chewing the rag and acting like a fool. He was across the street from where he was; that he had never called Russell a scab and did not use that kind of language. On redirect examination (Printed Rec., p. 234), he further testified that he did not threaten to go down to his house as it would not be safe to go down there.

Malley Colley (Printed Rec., p. 234), for the defendant, testified that he was a member of the local union and one of the parties that were out on the strike; that he was down at Herkert and Meisel Company plant for one hour in the morning; that he was there about three weeks altogether; that there was never more than six at one time down there and three of these men walked up and down and were standing at Twelfth street, one block away from the building.

Witness further testified that some outsiders were demonstrating every day; that they were not mem-

bers and he never tried to intimidate them; that he never did anything to anybody, outside of one time he spoke to a striker and he said to him, "Are you working at Murphy's?" Was coming over the bridge and he got in the same car which he got on. He says, "Yes; I found out today; I wanted my money, but Leo Murphy wouldn't give me my money, but I want to quit." He never used vile language towards anyone going or coming out of that factory; he did not threaten or intimidate anyone. On cross-examination witness was asked with reference to some men doing picket duty and he mentioned Henry Schnitze, Robert Webber, Ray Watke; he did not know Charles Morgan or Paul Berry (Printed Rec., p. 247); that John Zimmerman, Frank Kato, Sylvester Schnitze did picket duty.

Paul Berry, for the defendant (Printed Rec., p. 250), said he was a member of the union and left on strike with the rest of the members, and he went down to the store that evening and waited for some men to come out and notified them the strike was on, and that they had told him before that if they go out on a strike to come down and let them know, so he went down to Quirk's factory and told some of the men they had gone out on the strike; that he went around every morning and evening and never used any vile language towards anyone and that he never

saw anyone else do it; that he met McCommis coming out of the store and told him that they were going out on a strike and asked him what he was going to do. He went back to work and he never said he would break his head or anything of that kind; that he merely went up there to notify them that they were going out on a strike; that Morgan was with him at the time; that he and Morgan went home after they spoke to him and never went to the home of this boy; that he was never in this boy's home at any time and did not know where he lived; he never saw anybody interfered with coming and going out of the factory and never interfered with anybody. On cross-examination he said he did not know where Morgan lived and did not know where he went that day; and he did not think McCommas belonged to the Union. Examined by the Court (Printed Rec., p. 253), said he did not go to the home of this boy McCommas and have a conversation with him in the presence of his father and mother; and he did not know whether Morgan went there or not, he was with him down at the factory, but he was not with him later.

Charles Morgan (Printed Rec., p. 254), for the defendant, testified that he was working at Quirk Trunk Company and was a member of the local union, and that he and Berry went over to notify the members of the union at the factory of the strike; he was along about three times; that he never used

any vile or threatening language to anybody; that he met Herman McCommas at Twelfth and Pine, about one and one-half blocks from the factory; that they walked down the street together, down by his house, and stopped and told his mother about it, and she said that she wouldn't let the boy go back. On cross-examination (Printed Rec., p. 256) this witness testified he had known McCommas about one month, but Berry did not come with him to the house, but McCommas was not a member of the union; that he volunteered to go to Quirk's to do picket duty himself, but he merely told the people that there was a strike on.

Examined by the Court (Printed Rec., p. 258), witness stated he told McCommas' mother there was a strike there and to use her own judgment, and she said she would not let him work, and he didn't tell his mother that he had better stay away from there or somebody would knock his head off.

Ambrose Kuntz (Printed Rec., p. 260) testified for the defendant he was a member of the local union and that he did work at the Stability Leather Manufacturing Company, and he was down there once or twice a week and stayed for about one and one-half hours; he never heard of anybody called a vile name or attempt to prevent anybody from going or coming out of work, and that he had spoken to Amanda

Berger, who was a member of the local union, and he asked her if she got a letter to go back to work, and she said she had not and she ain't a scab like Clara Grim is; she is in there scabbing, and that he never used that word to her or to anybody else; that he never told Mrs. Berger she should not disgrace her children and she said she would not be like that to go and disgrace her children and to be a scab like Clara Grimm. On cross-examination witness testified (Printed Rec., p. 262) that he had known Amanda Berger for about three months; she and her sister were coming from the Stability Leather Company; that he and two others walked with her from the shop; that they talked to a few of the men; that they walked up and talked to them as soon as he saw them coming out of the factory; that he went with them from Chouteau avenue to Market street; that there was a couple of men who came down for an hour at a time; Wilhelm and Bosch and Deschant were their names, and all he saw during all that trouble were yourself and Deschant and Wilhelm and Bosch. He did not hear any conversation between Wilhelm and those girls in question.

Steve Wilhelm (Printed Rec., p. 265), for the defendants, testified he worked at the Stability Leather Manufacturing Company and was a member of the local union, and he went down to the factory after

the strike and was there two times and stayed about one and one-half hours in the morning and about that long in the afternoon, and that he was alone; that he met two women coming out of the factory with Bosch and Kuntz about two blocks from there; that when they came up to the girls and said, "Hello" and they asked her what she was doing, she said she went to the Stability Company to get a bundle, and we asked her if she was going to work; she said she would not go back and be a scab like Clara Grimm. He never called her a scab; that he had told her to go up there to see Mr. Birkenmier's office and get some information about the strike, and he had never used any violence to anybody or saw anybody else do it. On cross-examination (Printed Rec., p. 279) the witness testified that there was nobody going to work around the factory, and he saw Kuntz and Bosch there, and he saw this girl on her way home, but did not know she was working until Mrs. Berger told him the afternoon before he met the girl that she was working; they met the girls coming out of the factory and walked up to them and they walked along with them until they got to Market street.

Nora Wielandy testified for the defendants (Printed Rec., p. 271) she was a member of the union, working at Herkert & Meisel's; never did picket duty, and never went back after she quit. On cross-examina-

tion the witness testified (Printed Rec., p. 272) that one day she went to get her voucher cashed at 1007 Chestnut street, and after she did so Mr. Webber walked with her.

Esther Bradley (Printed Rec., p. 273) testified that she worked at Herkert & Meisel's and left on the 10th of April with the rest of the strikers, but she went back to the vicinity of the premises on one morning with Philip Deering, and she was there two times in all, and she had never tried to intimidate anybody or heard any threats made. On cross-examination (Printed Rec., p. 274) she said she attended the meeting at Chouteau avenue; she was never there when there was a large amount of picketing going on.

Herman Dieckhorner (Printed Rec., p. 275) said he was working at Herkert & Meisel's, and was a member of the local union; that he never volunteered for picket duty, and passed by the place about two weeks after the strike, and saw Mr. Mees, and Mr. Mees "did wave his hand at me and asked if I didn't want to work there."

Cross-examined, said the time he spoke to Mr. Mees was the only time he was around the factory; he attended four or five meetings, and he had heard no instructions issued to pickets.

Thomas Halliburton (Printed Rec., p. 277), for the defendants: That he was a member of Local Union and employed at Herbert & Meisel's factory, and left the same day as the rest; that he was down at the plant about one-half dozen days after the strike was declared; that there was never no more than six of the members there on any occasion; that coming from the meeting of the Leather Workers over Twelfth street that he knew of only two of them being present; he never tried to stop anyone that was going in or coming out of that factory. On one occasion there was two fellows that came by there, and asked them if they were going to work in there, and they said no; they told them there was a strike on there, and they said if that was the case they wouldn't work in there, anyway (Printed Rec., p. 278).

On cross-examination he said that Malley Colley was one of the pickets before he got there; that his intention was to notify anybody that was going in there; if there should happen to be a member of the organization they wouldn't like to go into a place of that kind and work. He said he told two men that there was a strike on there, and the largest number they ever had was six. Four or five men stopped at the corner in passing up Twelfth street. That he had never seen any girls interfered with in any way coming out of the factory.

On redirect examination (Printed Rec., p. 283), the witness testified that there were six men with him that were at the time they were coming from the hall on Chouteau avenue; that at other times referred to one or two, or possibly three, around the factory.

Annie Stocker (Printed Rec., p. 285; Original Rec., p. 426), for the defendants, testified that she worked at the Herkert & Meisel Trunk Company and was a member of the Local Union of Leather Workers while she was so working; that she quit with the rest; that she never used bad language to anybody, never prevented anybody from working for Heckert & Meisel Company, or tried to injure them in their business, and never did picket duty; that she passed by the place on her way from the meeting hall one evening, and did not stop nor loiter there; didn't talk to anybody, nor see anyone of her fellow members talking to any persons coming in or going out of the plant.

On cross-examination (Printed Rec., p. 286) this witness said that she attended the meetings frequently; that her purpose in passing Thirteenth and Chestnut streets was that she was going home; that she was at the meeting when the strike vote was called; that nothing was said about the pickets at that meeting, until about three weeks afterwards, and that she couldn't tell who spoke about pickets.

Walter Deschant, one of the defendants herein (Printed Rec., p. 287), stated he worked at the Stability Leather Goods Manufacturing Company; that he was a member of the Local Union of Leather Workers at the time; that he quit the employment of the Stability Company with the rest; that he was in the vicinity of their premises one time; that he never tried to prevent anybody from going in or coming out of the place, and didn't use any threats; that he never entered into a conspiracy with anybody to injure the complainants' business.

On cross-examination (Printed Rec., p. 288), the witness stated he volunteered to do picket duty; that the captain was Mr. Kuntz; that the only instructions he received was not to molest anyone, or speak to anyone; that if he saw anyone going in there just to notify the captain, that was all; that nobody went in or came out of the factory while he was there.

Robert Ginner (Printed Rec., p. 290; Original Rec., p. 434) for the defendant, testified he worked previous to the strike at Herkert & Meisel Trunk Company, and left after it was declared. That he went down once to the plant of the company when he was coming from the meeting hall, and two men came out, and he stopped them on Twelfth and Chestnut streets. As they came up, he asked them if they knew there was a strike on there. They said "No,"

and asked what departments. He said, "All departments." They said that they didn't know that and would keep out of there thereafter. That nobody was with him at that time; that he just happened to be passing along; that the instructions given to members of the organization of the Union by the officials was to conduct themselves peacefully.

On cross-examination, witness testified (Printed Rec., p. 291) that he never volunteered to do any picket duty; that he didn't know at the time he spoke to the men if they belonged to Local 66.

Henry Schnitze, a defendant (Printed Rec., p. 292), stated he was a member of local union of the Leather Workers and worked at the Herkert & Meisel Trunk Company; that he went there one day after he had quit, about three weeks after the strike, and stayed there about an hour and a half. That he met one man and he asked him where he was going, and he said he was going there to tell the boss that he was going to quit; that he didn't want to work while there was a strike on; that he spoke to one man who said he was out of work, and he told him that was all right; he could get a better job; that he never tried to intimidate anybody, to interfere with anybody coming in or going out of the factory; that he never entered into a conspiracy to destroy the interstate business of his former em-

Murphy Trunk Company and was a member of the committee that met the bosses; that he heard statements made by the chairman at the various meetings of the union, notifying the members not to be guilty of any violent conduct during the strike.

On cross-examination (page 302), the witness testified that he never was on the picket line; that he heard reports of conditions that prevailed in the shop from the pickets; that three pickets were assigned to each captain and one captain to each place; that he saw Burg at P. C. Murphy's after the 10th of April, and that he didn't know how many pickets were maintained after the Court's order.

On redirect examination, the witness testified that Burg had left the city.

At this point, counsel for the defendants stated that they were in a quandary as to statements alleged to have been made by some persons to some of the plaintiffs' witnesses, and that the only way that these statements could be combated because of the fact that the witnesses were unable to identify the persons that made them, would be by calling every member of the organization to testify that he never used the particular language. The Court intimated that he understood that there were eight hundred and fifty members, and he didn't want to sit and hear their testimony. No offer of proof was made, the Court ruling that it would be necessary to bring all the members in or none.

George Wenk, a defendant (Printed Rec., p. 305; Original Rec., p. 458), stated he worked for Herkert & Meisel Trunk Company, and left the employment at the time of the strike, and that the only occasion that he returned was to get some money that was coming to him; that he never intimidated anybody, or never knew of anybody that was intimidated in the employ of the complainants.

On cross-examination (page 306), the witness testified that he was present at a meeting of the union when the strike vote was taken; that he volunteered for picket duty, but that he didn't do it.

Al Birkenmeier, recalled (Printed Rec., p. 398), testified he never saw any restraining orders published; that he never went to factory since the strike started; that they met in a hall one block from P. C. Murphy's factory.

On cross-examination witness testified that he did not know whether any of the men picketed since the Court issued the restraining order. The witness further testified that he had not heard of any of the men having done anything against the law, and if they had they would have been arrested.

POINTS AND AUTHORITIES.

I.

Neither of the parties being aliens and citizens of the United States or citizens of different states, this Court has jurisdiction to hear the appeal of the defendants.

Judicial Code, Section 128, as amended Act of January 28, 1915, Chap. 22, and as amended Act of July 17, 1916;
Hugeley Mfg. Co. v. Galeta Cotton Mills, 184 U. S. 290.

II.

The parties to this suit being Missouri corporations upon the one side and citizens and residents of the same state on the other, the federal courts have acquired no jurisdiction over the defendants in this suit under the decision and ruling in the Coronado Coal Company case.

United Mine Workers of America v. Coronado Coal Co., 258 U. S. 42, Sup. Ct. Rep. 570.

III.

There was a failure of proof of the conspiracy as alleged in complainants' bill, and the defendants were not connected up with same.

Eddy on Combinations, Vol. I, Section 369;
Corpus Juris (Conspiracy), Vol. 2, 543;
Newell v. Jenkins, 26 Pa. 159;
United States v. Nunnemacher, 27 Fed. Cases, No. 15,902, l. c. 200.

IV.

Even if it be conceded that a conspiracy existed upon the parts of the defendants to unionize the plaintiffs' plants, such a conspiracy is not a violation of the Federal Antitrust Acts, the alleged interference relating solely to the manufacture of the goods and not to their shipment or delivery.

Kidd v. Pearson, 128 U. S. 1, 9 Sup. Ct. Rep. 6;
Heisler v. Thomas Colliery Co., 43 Sup. Ct. Rep. 83;
Champlain Realty Co. v. Town of Brattleboro, 43 Sup. Ct. Rep. 146;
Oliver Iron Mining Company v. Lord et al., 43 Sup. Ct. Rep. 526;
Gable v. Vonnegut Machinery Co., 274 Fed. 266;
Danville Local Union No. 115 v. Danville Brick Company, 283 Fed. 909.

V.

The alleged conspiracy or combination was not a direct attack on interstate commerce nor did it have such object or intention.

United States v. E. C. Knight Company, 156 U. S. 15, Sup. Ct. Rep. 249;

United Mine Workers of America v. Coronado Coal Co., 42 Sup. Ct. Rep. 570;

Gable v. Vonnegut Machinery Company, 274 Fed. 66;

Danville Local Union No. 115 v. Danville Brick Co., 283 Fed. 909.

ARGUMENT.

Honorable Circuit Judge Stone Dissents From the Majority Opinion.

The opinion of the Circuit Court of Appeals and which now in 284 Fed., page 446, was rendered by Honorable Walter H. Sanborn and concurred in by Honorable Thomas C. Munger, District Judge. There was a dissenting opinion filed by Circuit Judge Honorable Kimbrough H. Stone. We have annexed to this brief copies of majority opinion and the dissenting opinion of Circuit Judge Stone.

Evidence in the Case.

We shall not attempt to discuss in detail the evidence in the case, having regard to the importance of the jurisdictional point involved. We shall not discuss the evidence relating to the alleged charges of intimidation by the defendants in trying to interfere with persons working at the plants or to prevent them from entering them, but simply desire to call the attention of the Court to the fact that, except in one or two instances, no threats or improper language were used by any persons identified as being connected in any way with the defendants. It was ad-

mitted by the presidents and other persons managing the plants of the plaintiffs that no acts of physical violence or intimidation had come under their observation during the strike. It was further admitted that there had been no interference whatever with the delivery of the raw material to the plants or with the shipment of any manufactured articles from the plants to the freight depots.

Causes of the Strike.

It was admitted that the plaintiffs had an organization of trunk manufacturers of St. Louis at and previous to the strike. (See evidence of Francis Leo Murphy, Tr. of Rec., p. 83.) This combination of manufacturers claimed to control the entire business of manufacturing trunks and leather bags in St. Louis, as stated in their bill of complaint (Tr. of Rec., p. 7). The defendants and the other members of the United Leather Workers Union worked for these plaintiffs under a contract made between the union and the trunk makers association (Tr. of Rec., p. 55), and had entered into contracts or agreements specifying the conditions under which they worked. These contracts expired on April 1, 1920, and negotiations for a renewal of the contract were being conducted between the representatives of both organizations, resulting in a failure to agree upon the renewal

of the contract or an agreement relating to future employment, and the defendants, on the failure to agree, together with the rest of the employes engaged in the manufacture of trunks and leather goods—all of whom were members of the labor union—left the employ of the plaintiffs. This was the reason that the plaintiffs were unable to manufacture their raw material, and it was not due to any intimidation practiced or resorted to to prevent the plaintiffs from procuring other workers in their places. This will be at once apparent from the evidence of John A. Meisel, president of the plaintiff Herkert & Meisel Trunk Company, as contained in the following questions and answers:

> "Q. Have you shipped your full amount of goods, or any amount of goods, since the 10th of April, in interstate commerce?
>
> A. No, sir.
>
> Q. What happened to prevent you from shipping your goods in interstate commerce?
>
> A. The men going out on strike" (Tr. of Rec., p. 164).

Opinion of the Trial Judge.

The trial judge, Honorable C. B. Faris, of the Eastern Division of the Eastern Judicial District of Missouri, found in his opinion (Tr. of Rec., p. 46), a copy of which is appended to this brief, that the strike was called by the defendants pursuant to a vote taken

by the union and in the regular way under the rules and by-laws of the union and after a fruitless effort to agree upon wages and a contract embracing terms and conditions of future employment which seemed to have the phase of collective bargaining; that upon the calling of the strike and the failure to agree upon the new contract **practically all the employes of the plaintiffs quit their employment**; that after the calling of the strike and during the picketing, many unlawful and unpeaceful acts were committed by the pickets, such as calling the employes remaining in the employ of the plaintiffs vile and opprobrious names and instances of domiciliary visits and various other things of a like nature too numerous to mention; that these unlawful acts prevented the plaintiffs from employing other workmen to take the place of the strikers, so that they were unable to manufacture the goods necessary to fill both the interestate and **intrastate** orders which they had on hand; **that there was no actual interference with, or hindrance of, any interstate movement, or shipment of any goods made by the plaintiffs, or by either of them, for the very simple reason that the goods designed for interstate shipment had never come into existence on account of the interference mentioned**; that these goods could not be manufactured because the plaintiffs' former workmen struck and quit and other workmen could

not be obtained to manufacture them; these workmen were kept away by too numerous picketing and by threats and intimidation.

The trial judge further found that **such goods as were actually made by plaintiffs have been shipped in interstate commerce (when such was their destination) without let or hindrance.**

The trial judge further found that there was no diversity of citizenship involved in the case, and if the federal court had any jurisdiction at all it got it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209).

After citing the provisions of the Act of July 2, 1890, Chap. 647, 26 Stat. 209, and the cases of In Re Green, 52 Fed., l. c. 113; Hammer v. Dagenhart, 247 U. S., l. c. 272; Coe v. Errol, 116 U. S. 517, and Bacon v. Illinois, 227 U. S. 504, and particularly the doctrine as announced in the Hammer v. Dagenhart case, supra, the trial judge said:

> "Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation. When the commerce begins is determined, not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another state."

"This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control, to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress authority to regulate commerce among the states."

Kidd v. Pearson, 128 U. S. 1.

And the trial court, in its opinion touching the principles above announced, said:

"The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust Law. **If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act,** supra. But the matter is not one of first impression in this circuit. Therefore, it is my duty,

regardless of any personal views or convictions which I may hold upon the subject to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit."

The trial court then quoted the case of Dowd v. United Mine Workers of America et al., 148 C. C. A. 495, l. c. 51, and following what he conceived to be the doctrine of that case, the trial judge granted the permanent injunction. This because he felt himself forced to follow the opinion of the Circuit Court of Appeals, and he concluded that because some unpeaceful and unlawful acts were committed by pickets which were not repudiated by the defendants and members of the union that, therefore, the defendants and members of the union were bound to have notice of them, although there was no direct evidence that they knew of them. This was held sufficient to establish the conspiracy which might be shown from circumstantial evidence.

The trial judge in this case was one of the ablest of the Judges of the Supreme Court of the State of Missouri before being appointed to the Federal Bench and is a most capable and painstaking trial judge. We are, however, compelled to differ with him in the statement appearing in his opinion that counsel for defendants conceded that barring the question of jurisdiction and the existence of a conspiracy, the

plaintiffs were entitled to relief by injunction for which they prayed. This misconception was probably due to the fact that, recognizing that the jurisdiction of the federal court was a big question in the case, the attention of counsel was more or less concentrated upon that point in the brief.

Majority Opinion of the Circuit Court of Appeals.

The majority opinion of the Circuit Court of Appeals for the Eighth Circuit (which for the sake of brevity we may designate the majority opinion as it will appear in this argument), after quoting Section 1 of the Sherman Anti-Trust Act, states that:

> "The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means, such as too many pickets, assaults, threats and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous stream of the plaintiffs' interstate commerce, and prevent the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants."

This is, we respectfully submit, founded upon an entire misconception of the defense made by these defendants under the pleading and the proof. The defendants deny and it was not conclusively proved against them that they ever entered into a conspiracy for that purpose, or ever sought to, and they never admitted that the evidence in the case conclusively established these facts, as can be seen from a perusal of the transcript of the record in the case.

Having assumed this premise—which the defendants respectfully contend is shown by the record of the case to be without foundation—the majority opinion proceeds to state that (Tr. of Rec., p. 322):

> "The ordinary course of business of parties selling, making and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the sellers acknowledge in writing. Thereupon, such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods" (citing Rearick v. Pennsylvania, 203 U. S. 507, 511).

us, is emphasized by the Court, where it says (page 512):

> "The brooms were **specifically appropriated to specific contracts** in a practical if not in a technical sense. Under such circumstances it is plain that whatever might have been the title, **the transportation of the brooms for the purpose of fulfilling the contracts was protected commerce.**"

To this we may add that the plainly indicated purpose of the ordinance in question was, by the exaction of a large fee for a license, to make it unreasonably difficult for any person in traveling through the state to secure orders for interstate shipment, and the enactment of such an ordinance, therefore, was not an indirect and incidental interference with interstate commerce, **but a direct attack upon it,** and as such violated interstate commerce.

But suppose the orders were given for these brooms and the raw material out of which they were to be manufactured lay in the factory, within the state in which they were to be manufactured, could the fact that this raw material was intended by its owner to be manufactured into an article which he had contracted to sell and deliver in another state prevent the state of their location from imposing a tax upon it? Not only do the long line of authorities from the case of Coe v. Errol, supra, down to the case of

Heisler v. Thomas Colliery Co., 43 Sup. Ct. Rep. 83, hold that the states cannot be thus restricted in the exercise of their taxation power, but if they were so restricted the whole foundation would be swept from underneath the taxation powers of the state, and the mere assertion of interstate orders to manufacture goods from raw material would be a sufficient defense to any attempt upon the part of the state to exercise this power over its own citizens. We submit that no such drastic and sweeping invasion of state control was ever intended or declared in the Rearick case, supra, and this is made abundantly clear by the reference in that case to the case of the American Steel & Wire Company v. Speed, 192 U. S. Reports 500. An extract from the latter case is as follows (page 513):

> "But that decision did not modify the cases we have cited (Brennan v. Titusville, 153 U. S. 289; American Express Company v. Iowa, 196 U. S. 143; Caldwell v. North Carolina, 187 U. S. 622). It dealt with a case where a mass of nails and iron wire, were collected at Memphis from other states by a manufacturer **for all purposes**. Some of the goods to be sold on the spot, some ultimately to be forwarded to other states, **but no package being consigned or intended for any special customer or free from the chance of being sold by a new bargain in Tennessee. Under such circumstances the goods were liable to taxation in that state.**"

Here, therefore, is a clear and well-defined distinction between the application of the commerce clause and the Anti-Trust Act to manufactured goods specifically appropriated to interstate commerce and the raw material out of which they have to be manufactured, as was the status of the articles in the instant case.

Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 246, 20 Sup. Ct. Rep. 96, 109.

The above case is cited in the majority opinion as authority for the proposition that interstate commerce within the meaning of that term in the Constitution includes not only the contract and the transportation, but every initiatory, negotiating and intervening act of the parties from the time that the intercourse relating to it commences until transportation and delivery have been completed, and a large number of cases, United States and Federal, are cited in support of this proposition.

Among the cases cited are:

Butler Bros. Shoe Company v. United States Engineering Company, 156 Fed. 117;

International Text Book Company v. Pigg, 217 U. S. 91, 107;

Dahnke-Walker Milling Company v. Bondurant, 42 Sup. Ct. Rep. 106-8;

United States v. Reading Company, 226 U. S. 324, 367, 368;
Hopkins v. United States, 171 U. S. 578, 598;
United States v. Swift & Company, 122 Fed. 529, 531;
Welton v. State of Missouri, 91 U. S. 275.
(See page 321, majority opinion, Appendix B.)

Upon the basis of the principle above declared, the majority opinion asserts "that contracts evidenced by the unfilled orders in the instant case were contracts and transactions in interstate commerce, and that the manufacture of the goods pursuant to the orders was a transaction of interstate commerce and that a restraint imposed upon the selling, making, loading, shipping or transportation of the goods was the restraint denounced by the Anti-Trust Act, and brought the subject matter of, the parties to the suit and the relief of the Court granted far within the jurisdiction of the federal court under the Anti-Trust Act." We respectfully submit that this case does not support that proposition.

In the Addyston case, supra, the defendants were charged in the petition with having entered into a combination and conspiracy among themselves, by which they agreed that there should be no competition between them in any of the states or territories mentioned in the agreement (comprising thirty-six in all) in regard to manufacture and sale of cast iron

pipe and that in furtherance of the agreement and conspiracy, the defendants had been selling and shipping the pipe manufactured by them into other states. The prayer was for a forfeiture of the pipe from one state to another and for a decree dissolving the conspiracy and an injunction. In addition to demurrers to the prayer for the confiscation of the goods, answers were filed admitting the existence of the association between the defendants for the purpose of avoiding the loss that they would sustain by ruinous competition between them, but denied that their association was in restraint of either state or interstate trade, or that it was a monoploy or a violaion of the Anti-Trust Act, and this Court (page 240) said:

> "It was the intention, as it was the purpose, of the combination to **directly and by means of such combination** increase the price for which all contracts for the delivery of the pipe within the described territory should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination."

And this Court, after pointing out that the direct and immediate result of the combination was necessarily a restraint upon interstate commerce in respect of the articles manufactured by the parties for interstate transportation, added:

> "The defendants, by reason of the combination, could only send their goods out of the state

in which they were manufactured for sale or delivery in another state upon terms and pursuant to the provisions of such combination" (page 241).

Under these circumstances, it seems to us little wonder that this question was very pertinently asked by the Court:

> "Was not this a direct restraint upon interstate commerce?"

It is impossible to conceive a situation in which it could be more so. Again, in the same case, this Court further says (p. 243):

> "The combination thus had a direct immediate and **intended** relation to and effect upon the subsequent contract to sell and deliver the pipe."

It is at once apparent, we submit, from this language that only such combinations whose objects were direct, immediate and intended by the participants in that sense to restrain interstate commerce could be held to be under the federal control.

Emphasizing this view, we again quote the language of this Court in the same case (p. 246):

> "It is almost needless to add that we do not hold that every private enterprise which may

> be carried on chiefly or in part by means of interstate shipment is therefore to be regarded as so related to interstate commerce as to come within the regulating power of Congress."

And in the Addyston case, also, in affirming the doctrine of the Knight case, supra, the Court says:

> "Such enterprises may be of the same nature as the **manufacturing of refined sugar** in the Knight case—that is, the manufacturers may be engaged as manufacturers of a commodity which they may hereafter **intend at some time to sell and possibly sell in another state;** but **such a sale,** as we have already held, is an incident to and not the direct result of the manufacturers, and so is not a regulation of or an illegal interference with interstate commerce. **That principle is not affected by any thing herein decided.**"

In the Addyston case, supra, the present Chief Justice of this court, in his capacity as Chief Justice of the United States Court of Appeals for the Sixth Circuit, after discussing the decision of this Court in the case of United States v. Knight & Company, 156 U. S. 1, 15 Sup. Ct. Rep. 249, which was the basis of the decision of the court below, and pointing out the distinction between the questions involved in the Knight case and that under considera-

tion of the Court of Appeals, says (State v. Addyston Pipe and Steel Co., 85 Fed. Rep. 297):

"It seems to us clear that from the beginning to the end of the opinion the Chief Justice draws the distinction between **a restraint upon the business of manufacturing and a restraint upon** the trade or commerce between the states. In the articles after manufacture with the manifest purpose of showing that the regulating power of Congress under the Constitution could affect only the latter, while the former (i. e., the business of manufacturing) **was not under federal control and rested wholly with the state.**

"Among the subjects of commercial regulation by Congress he expressly mentions contracts to buy, sell or exchange goods to be transported amongst the several states, and leaves it to be plainly inferred that the statute does embrace combinations and conspiracies **which have for their object to restrain** and which necessarily operate in restraint **of the freedom of contracts.**

"The citation of the case of Coe v. Errol was apt to show that **merchandise before its shipment across state lines was not within the regulating power of Congress and a fortiori that its manufacture was not,** while Kidd v. Pearson clearly made the distinction between the absence of power in Congress to control manufacture merely because the manufacturer intends to add to interstate commerce with the product, and the power which Congress has to prevent obstruction to interstate transportation in the product when made.

> "But neither of these cases control the one now under consideration. The subject matter of the restraint here was not articles of merchandise or their manufacture, but contracts for sale of such articles to be delivered across state lines and the negotiations and bids preliminary to the making of such contracts, all of which, as we have seen, do not merely affect interstate commerce but are interstate commerce."

And in pointing out the misapplication of the doctrine of the Knight case and the other cases cited before, Chief Justice Taft adds that:

> "The error into which the Circuit Court fell, it seems to us, was not in observing the difference between the regulating power of Congress over contracts and **negotiations for sales** of goods to be delivered across state lines and that over the **merchandise the subject of such sales and negotiations. The goods are not within the control of Congress until they are in actual transit from one state to another, but the negotiations** and making of sales which necessarily invoke in their execution the delivery of merchandise across state lines are interstate commerce and so within the regulating power of Congress even before the transit of the goods in performance of the contract has begun."

In the Addyston case also we find the Chief Justice emphasized the view of the Court of the reason why relief was not granted in the Knight case, be-

cause the contracts and acts of the defendants in that case bore no direct relation to commerce between the states or with foreign nations and significantly added (page 299):

> "That the defendants in the present case combined and contracted with each other for the purpose of restraining trade and commerce among the states covered by their agreement in the articles manufactured by them **is too clear to admit of dispute.**"

In the Knight case, the Supreme Court said:

> **"Nothing in the proofs to indicate any intention to put a restraint upon trade or commerce."**

We may here remark that the statement of the Addyston case made by Chief Justice Taft was not only approved by this Court, but held to include all that was essential to the discussion therein and to be fully borne out by the facts set forth in the record, and the opinion as relating to the interstate questions involved was not only approved but practically adopted as the opinion of this Court. We have cited the extracts from the opinion in the Addyston case by the present Chief Justice of this Court, because it appears to us to very accurately contain every element of the federal question involved in the instant case, shows the reach of the domain of

federal jurisdiction in interstate commerce, the clear and well defined distinction between contracts for the sale of goods and their manufacture and clearly defines the limits of federal authority leaving to the state the control which properly belongs to it.

In the instant case, as pointed out by Judge Stone in his dissenting opinion:

> "There was no specific purpose or intent to affect interstate commerce, such as was alleged, for example, in the United Mine Workers case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character" (Tr. of Rec., p. 342).

We respectfully submit that upon the basis of the Addyston case, supra, the reasoning of the majority opinion that

> "The acts of the customers in sending the orders were initiatory acts in contracts and in interstate commerce, the receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contract and transactions in interstate commerce, and the direct restraint, and for a time the complete pre-

vention and thereafter the partial prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act, and brought the subject matter of the parties to the suit and the relief the Court granted far within the jurisdiction of the federal court under the Anti-Trust Act."

not only ignored the admitted fact in the instant case that the goods were never manufactured, but even if they were, and following the doctrine of the Rearich case, supra, **they were not specially appropriated to interstate commerce**, that by no process of reasoning, however subtle or refined, could manufacture of goods, even though specially ordered to be manufactured by persons in other states, come within the category of interstate commerce, except when they were actually in the course of transit out of the state of manufacture or subject to the exception in the Rearich case, i. e., especially appropriated to interstate commerce.

The majority opinion also cited the language of this Court in the Addyston case supra, as follows (page 242):

"When Congress has enacted a statute such as the one in question, any agreement or combi-

nation which directly operated, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the National Legislature and violated the statute."

Now it seems clear to us that what this Court meant to imply in the above statement was that the combination or agreement, in order to constitute a violation of the federal Anti-Trust Laws, should, as by means of a boycott, as in the case of Loewe v. Lawlor, 208 U. S. 274, be directed towards the prevention of the sale which under the authorities would clearly constitute a violation of the interstate commerce laws, but should in order to cover a case like the instant one include, not alone the manufacture of the goods, but their actual transportation to a destination outside of the state, and furnishes no basis for the doctrine in the majority opinion that even where there was no interference with the sale as was the situation in the present case, yet because the plaintiffs had interstate orders to fill—a fact which was not known to the defendants or at all events not proved against them—that the mere interference with the manufacture of the goods constituted a violation of interstate commerce and to such an extent as not

even the state in which the raw material lay could attempt to tax it without violating the federal law, and that too, entirely regardless of whether the raw material was ever fully manufactured for shipment into interstate commerce or whether its owners might change their minds and sell it within the state of its location, either in its raw or manufactured condition. We respectfully submit that this Court never contemplated such a wide and sweeping assertion of exclusive federal control to the almost entire exclusion of the control of the state, and this doctrine, as it seems to us, is in direct conflict with all of the decisions of this Court prior to the Addyston case and even to the Addyston case itself, for we find that this Court (page 242), after holding that the contract was one for the sale and delivery of a certain kind of pipe and that it was not generally essential to its performance that it should be manufactured for that particular contract, although it sometimes might be, and that if the bidder had on hand pipe of the kind specified or if he could procure it by purchase, he could in most cases deliver it in fulfillment of his contract just as if he manufactured it for the express purpose of the contract, pointedly and emphatically makes the distinction clear beyond possibility of doubt between federal control as applied to sale and

delivery and as applied to manufacture in these words:

> "**It is the sale and delivery of a certain kind and quality of pipe and not the manufacture which is the material portion of the contract, and a sale for delivery beyond the state makes the transaction a part of interstate commerce.**"

If raw material lying in a manufacturing plant within the borders of a state is to be considered a part of interestate commerce so as to vest the exclusive control of it within federal authority merely because its owner has contracted to sell articles which might be manufactured out of it to customers outside the state, then we submit that not only would the situation to which Circuit Judge Stone referred in his dissenting opinion, namely, that the

> "entire police powers of the state would be in danger of absorption by the national government,"

but that the very situation described in the case of **Heisler v. Thomas Colliery Company, 43 Sup. Ct. Rep. 86,** by his Honor Justice McKenna, speaking for this Court, would be brought about:

> "If the possibility, or, indeed, certainty, of exportation of a product or article from a state determines it to be in interstate commerce before

the commencement of its movement from the state, it would seem to follow that it is in such commerce from the **instant of its growth** or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production."

And to this sweeping declaration we may add that if the same doctrine be held to be sound that the distinction between interstate and intrastate judicial jurisdiction would practically be eliminated, since there would hardly be a vestige of state control left. To illustrate this, suppose the owner of raw material lying within the state of his residence has contracted to sell and deliver articles manufactured out of it in interstate commerce. If one of his debtors living in the state refused to pay him a debt which he owed and the owner of the raw material is able to prove

that without such payment he cannot manufacture his raw material and fill his interstate commerce orders, then this must be held—if the principle announced in the majority opinion be correct—to be a violation of the interstate commerce laws and thus in a mere simple contract debt and between citizens of the same state, the state courts are deprived of jurisdiction, and since it will always be easy to establish the existence of contracts outside of the state for the delivery of goods manufactured within it, the state courts in a great number of cases will have no jurisdiction over litigation between the citizens of the state, but that jurisdiction can be successfully challenged.

It is asserted in the majority opinion that (Tr. of Rec., p. 324):

> "The evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make and deliver from the State of Missouri into other states where their customers received them."

There was no evidence as to what portion of this went into interstate commerce or what proportion the volume of business in interstate commerce done by

the plaintiffs bore to the entire production of these goods in the United States of America, or that the fact—even if it be admitted—that the plaintiffs could not manufacture their goods and fill their orders had any effect whatever upon the prices of these articles throughout the country. In the language of Circuit Judge Stone in his dissenting opinion:

> "It is not shown in this evidence that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars worth of goods annually and that much of this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in United States v. Patten, 226 U. S. 525, and similar cases."

Stafford v. Wallace, 42 Sup. Ct. Rep. 397, 403, 258 U. S. 495.

Nor, we submit, is the majority opinion strengthened by the case of Stafford v. Wallace, supra, which

involved the constitutionality of the Packers Stock Yards Act of 1921, 42 Statutes 159, as far as the act provides for the supervision by federal authority of the business of the commission men and live stock dealers in the great stockyards of the country. A reference was made to the investigations of Congress of the activities of the owners of the stockyards in monopolizing the markets for cattle and the sale of same. It was held in that case (page 515) that:

> "The stockyards were not places of rest or final distribution. Thousands of head of live stock arrived daily by carload and train-load lots and must be promptly sold or disposed of and moved out to give place to the constantly flowing traffic that presses behind. **The stockyards are but a throat through which the current flows** and the transactions which **occur therein are only incidents** to this **current from the West to the East** and from **one state to another.** Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character."

After intimating that the sales under the conditions made could not be referred to as local transactions, and discussing the course of business which took them out of that category, the Court said (page 516):

> "The act, therefore, treats the various stockyards of the country as **great national public utilities** to promote the flow of commerce from the

ranges and farms of the West to the consumers. It assumes that they conduct a business affected by the public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion."

And the Court significantly adds:

"Nor is there any doubt that in the receipt of the live stock by rail and in their delivery by rail the stockyards are an interstate agency."

To bring the complainants within the doctrine of the Stafford case, supra, it would be necessary to hold that these plaintiffs were conducting great national utilities to promote a flow of commerce from north to south and from state to state; that they were an interstate agency and conducting a trade so vast as to make the rest of the manufacturers of the country in the same line of goods fade into insignificance in comparison.

In the case of Swift & Company v. United States, 196 U. S. 398, 399, also cited in the majority opinion (Tr. of Rec., p. 325), where the bill charged a combination of a dominant portion of the dealers of fresh meat throughout the United States, it was said (page 396):

"The statute gives this proceeding against combinations in restraint of commerce among the

states and against attempts to monopolize the same. **Intent is almost essential to such a combination and is essential to such an attempt.**"

And at page 397 of that case this Court further says:

> "The effect of the combination upon the commerce among the states is not accidental, secondary, remote or merely probable (which is the situation in the instant case). And on the same page it is said: '**The subject matter was sales.**' And the very point of the combination was to restrain and monopolize commerce among the states in respect to such sales."

In the Swift & Company case, supra, the case of Hopkins v. United States, 171 U. S. 578, is differentiated from the Swift case because the business embraced in this case was of a merely local character, even if the objects to be sold were objects of interstate commerce and the effect of the commerce was only indirect and not within the act (page 397).

Coe v. Errol, 116 U. S. 517.

So, also, the doctrine of the case of Coe v. Errol was held not to apply to the Stafford v. Wallace case, supra, and the very principle for which we are contending, as cited in the case of Coe v. Errol, supra,

was distinctly approved at page 526 in the following language:

> "Property in a state which its owner intends to transport to some other state, **but which is not in actual transit** and in respect to the disposition of which he may change his mind, is not interstate commerce just because of the intention of the owner, and may therefore be taxed by the state where it is."

But even if a conspiracy existed for the purpose of unionizing the plaintiffs' plants between the defendants in the instant case, there was an utter absence of any intent to interfere with interstate commerce so as to bring it within the doctrine of the Stafford and the Swift cases, supra.

Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282.

In the Dahnke-Walker Milling case, supra, it was held that when goods in one state are transported into another for the purpose of sale, interstate commerce embraces their sale after they reach their destination and while they are in the original packages. It was said in that case that the goods were protected from state regulation because while in the original packages they were regarded as interstate commerce and it was held that a person or corpora-

tion from one state could go into another for all legitimate purposes of interstate commerce, and any statute of the latter state which attempted to lay a burden upon the exercise of this privilege was void.

But this case cannot be held to apply to the instant case, because the goods in the former had been shipped from the state of production or manufacture, and in the instant case the goods had never come into existence.

United Fuel Gas Company v. Hallanan, 257 U. S. 277.

In the case of United Fuel Gas Company v. Hallanan, supra, also cited in the majority opinion, the tax imposed upon the transportation of oil, so far as the quantity is produced in but moving out of West Virginia, was held void under the commerce clause. This was so, as it appears to us, because the oil was held to be moving into interstate commerce conveyed by pipes through the state and out of it, and these pipes might be very well considered instrumentalities of interstate commerce.

The continuously flowing currents of interstate commerce, as mentioned in the majority opinion, lacking continuity would simply be, as applied to the facts in the instant case, a piece of flowery metaphor.

The majority opinion says at page 326 of transcript of record:

> "Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made."

We respectfully disclaim having made any such argument, either in brief or orally. It was very true that in the District Court, and before the trial judge, the question of the jurisdiction of the federal court in this case, which seems to us to be the big question in the case, was particularly stressed, but no argument of the character mentioned in the majority opinion was made by implication or otherwise. Upon the contrary, we respectfully contend that a perusal of the record in this case will show that there was no conspiracy proved to exist between the defendants for the purpose of unionizing the plaintiffs' plants or for any other purpose. The strike was due to a failure upon the part of the plaintiffs and the defendants to reach an understanding for a renewal of their contracts, and it was both held by the trial judge and admitted by the plaintiffs (page 176, Tr. of the Rec.) that the strike was perfectly proper and legal and the defendants had the right to strike.

The majority opinion on the assumption that the argument just mentioned had been made by counsel for the defendants further said:

> "But one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce, and their prevention of the flowing of the currents of these articles in interstate commerce, was to deprive the plaintiffs of their income from the sale and deliveries of the goods and by this continuing loss of income to compel the submission of the plaintiffs to their demands."

We respectfully submit that the application for injunction, being a quasi-criminal proceeding, should, like every other species of equitable relief, be only granted on evidence which supports the allegations of the bill, and that the same rules of evidence should apply to it as to other proceedings, and that this evidence should be based upon facts fully proved, and if a conspiracy were alleged that every link connecting that conspiracy with the defendants should be proved and the case against the defendants should not be based upon suspicion and conjecture.

The majority opinion also held (Tr. of Rec., p. 326):

> "That the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce and this result was so evident and unavoidable that the defendants could not have failed to know to purpose and to intend that this should be the result."

This portion of the opinion is most completely answered by Circuit Judge Stone in his dissenting opinion, where he says (Tr. of Rec., p. 342):

> "This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing, and if possible, preventing plaintiffs from manufacturing their products. This was to be brought about by preventing them from procuring the necessary labor except through employment of members of the union. But there was no specific purpose or intent to affect interstate commerce such as was alleged, for example, in the United Mine Workers case, supra. Nor

is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character. That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found it must be imputed, as matter of law, not fact, from the circumstances that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce."

United States v. Patten, 226 U. S. 525.

In the case of United States v. Patten, supra, the Court considered the sustaining of demurrers to indictments in a criminal prosecution under the Anti-Trust Act of July 2, 1890, 26 Statutes 209, Chap. 647. The charge was the organizing of a conspiracy to establish a corner in cotton and in providing for the purchase of speculators from the New York cotton exchange of quantities of cotton for future delivery in excess of the amount available for delivery when deliveries were to be due. Thus, an abnormal demand was to be created on the part of such sellers who would pay excessive prices to obtain the cotton for delivery. The immediate effect of this was to cause a rise in prices throughout the country and thus impede and obstruct interstate commerce in

cotton. This the Court construed as a direct attack on interstate commerce and very carefully discriminated it from those where the attack was indirect, in the following language:

> "Of course, the statute does not apply where the trade or commerce to be affected is purely intrastate. Neither does it apply—as this Court has often held—where the trade or commerce is interstate, unless the effect therein **is direct, not merely indirect.**"

The Patten case, supra, is cited in the opinion of this Court in the case of United Mine Workers of America v. Coronado Coal Company, supra, as is also the case of Stafford v. Wallace, supra. After stating that Congress had the power to punish conspiracies in which practices though not really part of interstate commerce were likely to obstruct, restrain and burden it, said:

> "But in the latter case the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances."

United Mine Workers of America v. Coronado Coal Company.

The charge in the above case was that there had been and at the time of the filing of the bill of com-

plaint was a continuously operating conspiracy between the union coal operators and the international union to restrain interstate commerce in coal and to monopolize it, and that the work of District No. 1 at Prairie Creek was a step in that conspiracy for which it can be held liable under the Anti-Trust Act, and this Court said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, we said:
>
> > "'The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof (Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439).'"

To this it was added:

> "Obstruction to coal mining is **not a direct obstruction to interstate commerce** in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

The same process of reasoning will apply, we submit, to the instant case, but the majority opinion

cites the following from the Coronado Coal Co. case, supra:

> "Coal mining is not interstate commerce and obstruction of coal mining, although it may prevent coal from going into interstate commerce, is not a restraint of that commerce, unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred" (Tr. of Rec., p. 327),

and draws the conclusion from this citation:

> "That if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce, its relation to interstate commerce is governed by the same rule,"

and it is further said in the majority opinion (Tr. of Rec., p. 327):

> "If the obstruction to it is intended directly to restrain interstate commerce, or if such obstruction necessarily has such a direct, material and substantial effect to restrain it, that the intent so to do reasonably must be inferred, then

> such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust Act. The case in hand falls directly under this rule."

In establishing this proposition the majority opinion stated that:

> "The obstruction and prevention of the manufacture of the articles which the plaintiffs had made interstate commerce contracts to make, sell and deliver, and to pour into their continuously existing currents of interstate commerce, could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles."

Now, it seems to us, that was a complete misapplication of the principle announced by this Court in the Coronado Coal Company case, supra. No such intent could, as pointed out by Circuit Judge Stone in his dissenting opinion, be reasonably inferred.

Conspiracy.

From the evidence in the record there is not the slightest proof that the defendants ever entered into or organized or attempted to carry into effect a conspiracy to interfere with the interstate commerce of

the plaintiffs by any statement or by any of their actions. It is admitted, as we have before stated and the learned trial judge so found, that there was no interference with any shipment from the plaintiffs' factories and if the intent of interfering with the interstate commerce of the plaintiffs is to be imputed—as stated by Judge Stone in his dissenting opinion—to the defendants as a matter of law, it can only be imputed to them by their own overt acts or the acts of other coconspirators—assuming the existence of a conspiracy.

Now, as we take it, an "**overt act**" means simply an open, visible act from which some other secret act or some covert and dark intention of the mind can by just and sound reasoning be inferred. An intention of the mind cannot be proved except by overt or visible acts which flow from it, and which cannot be reasonably accounted for except by the existence in the mind of such a design. Now, there is no overt or visible act in the entire evidence in this case which can be chargeable to these defendants, which will in any way indicate either a knowledge of any contracts which the plaintiffs might have had in interstate commerce or any direct attempts to interfere with it.

This Court, in the Coronado Coal Company case, supra, distinguished it from that of Lowe v. Lawler, 208 U. S. 274. There the gist of the charge, held

to be a violation of the Anti-Trust Act, was the effort of the defendants, members of a trade union, by a boycott against a manufacturer of hats to destroy his interstate sales in hats, and the reason of the distinction was pointed out by his Honor, Chief Justice Taft, in the following significant language:

> "The direct object of the attack was interstate commerce."

It appears to us, that if this rule announced in the above citation from the Coronado Coal Company case, supra, be applied to the solution of the problem referred to in the dissenting opinion of Circuit Judge Stone in the following words:

> "But is it true when the problem before the Court is to define that somewhat difficult line which separated the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation,"

that there will be little difficulty in solving it, and in point of fact such difficulty will disappear, for it will be always possible to determine by direct proof or from inferences based on just and sound reasoning whether or not the direct object of the attack was interstate commerce. As an illustration of this

principle, let us quote from the Coronado Coal Company case, supra (page 583):

> "In the case at bar there is nothing in the circumstances or the declarations of the parties to indicate that Stewart, the president of District No. 21, or Hull, its secretary-treasurer, or any of their accomplices, **had in mind interference with interstate commerce** or competition when they entered upon their unlawful combination to break up Bache's plan to carry on his mines with nonunion men. The circumstances were ample to supply a full local motive for the conspiracy. Stewart said, 'We are not going to let them dig coal—the scabs.' His attention and that of his men was fastened on the presence of nonunion men in the mines in that local community. The circumstance that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance."

We submit that the majority opinion in this case is in direct and positive conflict with the doctrine of the Coronado Coal case.

Gable v. Vonnegut Machinery Company
(274 Fed. 66).

The majority opinion is also in direct and positive conflict, we submit, as stated by Circuit Judge Stone in his dissenting opinion, with the case of Gable v. Vonnegut, supra, decided by the Circuit Court of Ap-

peals for the Sixth Circuit. In this case the defendants were charged with having entered upon a strike in furtherance of a conspiracy to interfere with the sale and delivery of articles manufactured by a tool company in Ohio to points outside that state, and that the defendants had unlawfully interfered with persons en route from points outside the State of Ohio to the tool company's plants. In that case, too, the allegations of the bill set forth that the tool company's business consisted largely in the sale and delivery of articles manufactured by it to points outside of the State of Ohio, and the Court held that all these statements in the bill of complaint fell short of alleging interference with interstate commerce under either the Sherman or the Clayton Acts, and that:

> "Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacture is not commerce. None of the cases cited suport the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interfered with the manufacture of his products which are sold generally in interstate commerce."

And the Court further said:

> "The record before us is barren of evidence that the object of the strike was to interfere with

interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the Tool Company's plant. The fact that shipment was interfered with only because goods were not manufactured merely incidentally and indirectly affected interstate commerce."

Dissenting Opinion of Circuit Judge Stone.

The cases bearing on the issue in the instant case are discussed so fully and so ably by Circuit Judge Stone in his dissenting opinion that we shall not specifically refer to them, but content ourselves with a brief reference to the case of Kidd v. Pearson, 128 U. S. 1, l. c. 20, where the distinction between buying, selling and transportation and manufacture in relation to interstate commerce is most clearly set forth. There it is said:

"No distinction is more popular to the common mind and more clearly expressed in economic and political literature than that between manufacture and commerce. **Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different.** The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

And in the case of United States v. Knight, 156 U. S. 1, Mr. Justice Harlan said:

> "In Kidd v. Pearson we recognized, as had been done in previous cases, the distinction between the mere transportation of articles of interstate commerce and the purchasing and selling that preceded transportation. It is said that manufacture precedes commerce and **is not a part of it, but it is equally true that when manufacture ends** that which has been manufactured becomes a subject of interstate commerce" (page 35).

It is also stated in the majority opinion that

> "the defendants are estopped from denying the necessary direct and inevitable effects of their acts."

This means, as we view it, that the defendants, however innocent they may be of any intention to obstruct or interfere with the interstate commerce of the plaintiffs, must in a quasi-criminal proceeding face a presumption of guilt which they are estopped from either denying or disproving. We respectfully submit that this is not the law.

To this we may add that the **very best proof that could be made that the defendants had no intention of interfering with the plaintiffs' interstate shipments**

was that, as the facts stated and the learned trial judge so found, that there was no interference whatever with the shipment of any of the plaintiffs' goods that were manufactured from the factory to the freight stations, nor to the importation of raw material out of which the goods were to be manufactured.

We submit, in conclusion, that the plaintiffs should not be permitted to stamp the courts of the state which gave them their charters and in which they are doing business as incapable of determining their right to equitable relief or unwilling to accord it in disputes between them and citizens of the same state—if they prove themselves entitled to such relief—as their attempt to ignore the jurisdiction of these courts implied. We submit, further, that to give to the federal authority the sweeping control of the internal affairs of the states, which the majority opinion is stated by Circuit Judge Stone to give, and which in our humble opinion it does give in the instant case, would be destructive of the most skillfully regulated system of our government which keeps both federal and state governments moving in their proper orbits so that one cannot clash with the other, for it is always—as said by the Chief Justice of this Court in the Coronado case—it is of far higher importance

that the fundamental limitations in respect to the federal jurisdiction should be preserved inviolate.

Respectfully submitted,

JOHN P. LEAHY,
Solicitor for Appellants.

Service of the above brief and receipt of copy thereof is hereby accepted and acknowledged this 19th day of December, 1923.

CHAS. A. HOUTS,
MAT J. HOLLAND,
Solicitors and Counsel for Appellees.

APPENDIX A.

Opinion of the District Court on the Granting of the Permanent Injunction.

Plaintiffs, and each of them, are engaged in the manufacture of trunks, valises, hand bags and similar articles, which they sell on orders in the State of Missouri, and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiffs' business consists in sales, on orders for their products, in other states than the State of Missouri.

Prior to, and at the time of, the issuance of the temporary restraining order herein, each of the plaintiffs had on file many unfilled orders from states other than the State of Missouri, for goods, which goods, when manufactured, were to be shipped in interstate commerce. A strike was called by the defendants, which are local labor unions, or officers and members of such unions, pursuant to a vote taken by the unions and in the regular way under the rules and by-laws of the unions. This strike was called after a fruitless effort to agree upon wages and upon a contract embracing the terms and conditions of future employment, which seems to have had therein the phase of collective bargaining.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employes of the plaintiffs quit plaintiffs' employment. Thereafter, and until the temporary restraining order was issued herein,

the several shops of plaintiffs were picketed by striking employes; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs, or some of them. During this picketing many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employes, and divers employes who continued in the employment of plaintiffs, vile and opprobrious names; there were instances of domiciliary visits accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers; so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. Many of the goods, in fact the larger proportion thereof, which plaintiffs would have made, but were in the mode above mentioned prevented from making, would have been shipped when manufactured, to other states, to fill what is called in the record "interstate orders." There was no actual interference with or hindrance of any interstate movement, or shipment of any goods made by plaintiffs, or by either of them, for the very simple reason that the goods designed for interstate shipment have never come into existence on account of the interference mentioned. For, as forecast, these goods could not be manufactured because the plaintiffs' former workmen struck and quit, and other workmen could not be obtained to manufacture them; these potential workmen being kept away by a too numerous picketing and by

threats and intimidation. Such goods as were actually made by plaintiffs have been shipped in interstate commerce (when such was their destination) without let or hindrance. The methods used by defendants in preventing plaintiffs from obtaining other workmen have been, as stated, in numerous proven instances, unpeaceful and unlawful.

Barring the question of jurisdiction, and the existence of a conspiracy, plaintiffs are unquestionably entitled to the relief by injunction for which they prayed. Indeed, counsel for defendants seemingly concede this is a tacit way, because the burden of counsel's contention is bottomed solely upon the alleged phases of jurisdiction and absence of a conspiracy. There is no diversity of citizenship involved in the case. If this Court has jurisdiction at all, it gets it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209).

Upon this point it is urged that, since the goods of plaintiffs which they intended to ship in interstate commerce when they came into existence were not in existence at the time defendants unlawfully interfered with plaintiffs' business, the case does not fall either within the purview or protection of the Sherman Anti-Trust Act, supra, and, therefore, this Court has no jurisdiction. Confessedly the point urged is, at least on principle, a close and difficult one. So much of the language of the Sherman Anti-Trust Act, supra, as seems pertinent to this question reads thus:

> "Every contract, combination, in the form [—] a trust or otherwise, or conspiracy in re-

straint of trade or commerce among other states, or with foreign nations, is hereby declared to be illegal" (Sec. 1, Act of July 2, 1890, Chap. 647, 26 Stat. 209).

Pursuant to the provisions of Section 4 of the Sherman Anti-Trust Act, supra, jurisdiction to enforce compliance with the provisions of the Act by injunction is conferred upon the Federal District Courts, sitting as courts of equity. When we read sections 1 and 4 together, and convert the definition of section 1 into plain and concise language, it is simply provided, that every conspiracy in restraint of interstate commerce may be enjoined in a federal court; subject, of course, in a labor dispute to the qualifications set out in the Clayton Act. It is strenuously contended by learned counsel for defendants that when Congress referred, in the Sherman Anti-Trust Act, to the restraints of interstate commerce, it held in mind the usual and ordinary definition of such commerce; and that the questions of when such commerce begins, and when it ends, are referable to the well-known definitions of this commerce which have long been well settled in the federal courts.

Illustrating this view and this contention it was held in the fairly early case of In re Green, 52 Fed., l. c. 113, in an opinion rendered by Judge (afterwards Mr. Justice) Jackson, that

"when the (interstate) commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but the actual delivery of it to a common carrier for transportation, or

> the actual commencement of its transfer to another state * * * Neither the production or manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade, and traffic with citizens of other states, nor the preparation for their transportation from the state where produced or manufactured prior to the commencement of the actual transfer or transportation thereof to another state, constitutes that interstate commerce which comes within the regulating power of Congress."

This definition of interstate commerce with reference to when it begins, learned counsel for defendants urge, has been very lately affirmed and followed by the Supreme Court of the United States in the case of Hammer v. Degenhart, 247 U. S., l. c. 272, where it was said:

> "Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation.
>
> "'When the commerce begins is determined not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another state (Mr. Justice Jackson, In re Green, 52 Fed. 113).'
>
> "This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise all manufacture intended for interstate shipment would be brought under federal

> control, to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1)."

The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust Law. **If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act, supra.** But the matter is not one of first impression in this circuit. Therefore, **it is my duty, regardless of any personal views or convictions which I may hold** upon the subject, to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit.

In the case of Dowd v. United Mine Workers of America et al., 148 C. C. A. 495, local citation 51, it was said by the Circuit Court of Appeals of this Circuit, that:

> "Some of the coal companies were not actually engaged in interstate commerce at the time the alleged acts were committed by the defendants;

but they were preparing to do so; and were prevented from so doing, as they allege, by the wrongs of the defendants. It was held in Pennsylvania Sugar Refining Co. v. American Sugar Refining Co. et al., by the Circuit Court of Appeals for the Second Circuit, 166, Fed. 254, 92 C. C. A. 318, that:

"A conspiracy to prevent a manufacturer who procures his supplies and disposes of his products by means of interstate commerce from engaging in business at all necessarily places restraint upon such commerce. Its flow is restricted and interrupted. The importation and exportation of articles of commerce are directly prevented, and none the less so because the conspiracy may be of so wide a scope as to interfere with interstate commerce also."

To the same effect is Thompson et al. v. Union Castle Mail Steamship Co. et al., 166 Fed. 251, 92 C. C. A. 315 (2nd Circuit).

It is next objected that the alleged wrongs of the defendants do not constitute an interference with interstate trade or commerce. We do not think, since the case of Loewe v. Lawlor, 208 U. S. 374, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Lawlor v. Loewe, 235 U. S. 5, 522, 35 Sup. Ct. 170, 59 L. Ed. 341, it can be said that this can be considered an open question. In rendering the opinion of the Supreme Court when the case was last before it, Justice Holmes said:

"The substance of the charge is that the plaintiffs were hat manufacturers who employed nonunion labor; that the defendants were members of the United Hatters of North America, and also

> of the American Federation of Labor; that in pursuance of a general scheme to unionize the labor employed by the manufacturers of fur hats (a purpose previously made effective against all but a few manufacturers) the defendants and other members of the United Hatters caused the American Federation of Labor to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other states and against dealers who shall deal in them; and that they carried out their plan with such success that they have restrained or destroyed the plaintiffs' commerce with other states."

This charge being proven, the learned Justice further said (235 U. S. 534, 35 Sup. Ct. 172, 59 L. Ed. 341):

> "We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were proved and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named."

Again, touching the far-reaching power of Section 1 of the Sherman Anti-Trust Act, supra, it was said by the Supreme Court of the United States in Eastern States Lumber Association v. United States, 234 U. S. 600, that that section broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce.

After the decision of the Circuit Court of Appeals of the Eighth Circuit, in the case of Dowd v. United Mine Workers etc., supra, the latter case, under the

style of United Mine Workers of America v. Coronado Coal Co., was again before the Circuit Court of Appeals of this circuit (258 Fed. 829). The question of jurisdiction was again raised and, seemingly, strenuously urged. The Court refused to re-examine the question of jurisdiction, bottomed there, as here, upon the construction of the provisions of the first section of the Sherman Anti-Trust Act, but contented itself with saying upon this point:

> "The learned counsel for defendants neither in their voluminous brief (326 printed pages) nor in their oral argument questioned these statements of facts, nor did they seriously attack the sufficiency of the evidence, but they insist that they do not establish that the plaintiffs were engaged in interstate commerce, and, therefore, these acts were not in violation of the Sherman Act. The leading case relied on is United States v. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, but this case, if not expressly overruled, has been much weakened by the later decisions of the Supreme Court, and it was so held by this Court when this case was here before, 235 Fed. 1, 8, 148 C. C. A. 495. As this Court, when this case was here before, held that the alleged wrongs and torts of the defendants charged in the complaint, and which at the trial were established by substantial evidence, constituted an interference with interstate commerce, and violated the Sherman Act, that opinion is the law of the case, and cannot be again re-examined."

I need not go into the somewhat complicated facts before the Court in the Dowd case, supra. It will suffice to say that if the coal companies, which were

the plaintiffs therein, were, upon the facts, engaged in interstate commerce, then the plaintiffs here are also, upon the facts, engaged, and were at the time of the happening of the matters and things herein complained of, engaged in interstate commerce. In the Dowd case the coal, or much of it, which was intended for interstate commerce, but which was prevented from flowing therein by the unlawful acts of the defendants there, had not been mined, and, therefore, was not in existence as a commodity of any sort of commerce for transportation; moreover, one of the plaintiffs had not engaged in business at all, but was preparing to do so, and was prevented by defendants therein from so doing. So, also here, the goods for which plaintiffs had orders in interstate commerce, and which were to be manufactured for shipment therein, were not in existence. They were prevented from coming into existence by the conspiracy of defendants and by the unpeaceful and unlawful overt acts done and committed by defendants in the carrying out of the conspiracy. The broad language of the Dowd case regarded, the additional fact in that case that a loaded car of coal was actually destroyed would seem too negligible a factor to call for a difference in the rule.

Therefore, following the rule so clearly announced in the Dowd case and the Coronado Coal Company case, as in duty bound, **I am constrained, regardless of my own views, to hold that the plaintiffs here were engaged in interstate commerce** and that the acts of defendants operated as restraints upon that commerce within the purview of the first section of the Sherman Anti-Trust Act.

I may dispose of the question of the existence of the conspiracy more briefly and with less difficulty, at least in my own mind. In order to do this logically a brief reference may again be made to the facts. These facts substantially are, that efforts to agree with plaintiffs on a new contract of employment having failed, the Local Unions, who are the defendants here, immediately called a general strike against the shops of all of the plaintiffs, and thereupon practically all of the employes of plaintiffs quit work and many of them began to picket plaintiffs' shops. This picketing was done in a way that was not lawful, and which is not legally permissible, even under the broad provisions of the Clayton Act. Defendant Unions appointed committees to take charge of and manage this strike, which, of course, largely meant to manage the pickets who were engaged in picketing the shops of plaintiffs. No extra pay seems to have been given to those members of the Union who did picket duty, though apparently the pickets (as were others of the striking employes) were paid strike benefits by the respective unions to which they belonged. The pickets volunteered for duty, but as said above, they were in charge of the committees of the Local Unions. If these pickets committed unpeaceful and unlawful acts, therefore, absent any protest or disciplinary action by the Local Unions, the latter are liable for such acts. The Unions cannot be heard to say that having charge of and controlling these pickets, they are not to be held liable for the divers unlawful acts done by the pickets. If it be said that the Unions in such case should have some knowledge or notice of the unlawful acts committed by pickets

employed by them, and I think this ought to be conceded, the answer is that such knowledge and notice may be inferred from all the facts and circumstances shown by the evidence.

Neither is it necessary to prove the conspiracy alleged in the complaint by direct evidence. Such a conspiracy may be shown by circumstantial evidence. If the rule were otherwise it would ordinarily be impossible to establish a conspiracy in any case; a fortiori, in a labor dispute.

I conclude that the facts and circumstances disclosed a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit.

It allows that the permanent injunction prayed for by plaintiffs ought to be granted. Let a decree be drawn accordingly.

(Indorsed: "Filed Nov. 6 190 W. W. Nall, Clerk.")

APPENDIX B.

Majority Opinion of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Sanborn, Circuit Judge.

This is an appeal by United Leather Workers' International Union, Local Lodge No. 66, an association of about 600 union workmen of St. Louis, Missouri, and about 25 individual members of that association, defendants below, from a final decree of the District Court which enjoined them from compelling or inducing any of the employes of the plaintiffs, corporations of Missouri, whose places of business were in St. Louis, by threat, intimidation, force, abusive, violent or insulting language, the threat of superior numbers or pickets, by assaulting, threateningly accosting, laying hands upon, by following them to their homes, or intimidating the members of their families, to leave the service of the plaintiffs or to fail or refuse to perform their duties to the latter as such employes.

The plaintiffs were five corporations of the State of Missouri, who for a long time had been and were on and prior to the 10th day of April, 1920, engaged in selling, on orders from their customers, the great majority of whom were residents and citizens of other states than Missouri and had their places of business therein, manufacturing and shipping to such customers at their places of business, trunks, leather goods, and bags, which by such orders the customers bought and directed the plaintiffs to make and ship to them.

(1) This suit was founded on Section 1 of the Sherman Anti-Trust Act, which reads:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. Stat., Sec. 8820, Act of July 2, 1890, 26 Stat. 209, c. 647, Sec. 1).

The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means, such as too many pickets, assaults, threats and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous streams of the plaintiffs' interstate commerce, and prevent the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce, and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants.

The ordinary course of business of parties selling, making, and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the

sellers acknowledge in writing. Thereupon such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods (Rearick v. Pennsylvania, 203 U. S. 507, 511, 27 Sup. Ct. 159, 51 L. Ed. 295). The evidence was that when the defendants stopped the interstate commerce of the plaintiffs by stopping the making of the goods their customers had ordered the plaintiffs had such unfilled orders or contracts for the sale, manufacture and shipment to their customers at the latters' places of business in states other than Missouri of these respective values: Herkert & Meisel Trunk Company, $200,000; James A. Quirk & Co., $15,000; F. A. Kolb Trunk and Case Company, $5,000; the Stability Leather Goods Company, $32,000; P. C. Murphy Company, $75,000—aggregating $327,000. The Supreme Court has declared that—

> "Where the contract is for the sale of the article and for its delivery in another state, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce, and not one relating only to manufacture" (Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 246, 20 Sup. Ct. 96, 109 [44 L. Ed. 136]).

Indeed, the established rule is that "interstate commerce," within the meaning of that term in the Constitution and the Anti-Trust Act, embraces far

more than the mere sale, exchange and interstate transportation of the goods. It includes intercourse; it comprehends every contract, trade and dealing between citizens of one state and those of another which contemplates the transportation of goods, persons or information from one state into another, and every initiatory, negotiating and intervening act of the parties to that trade or deal from the time the intercourse relating to it commences until the transportation and delivery have been completed (Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed 1, 17, 84 C. C. A. 167; International Textbook Co. v. Pigg, 217 U. S. 91, 107, 30 Sup. Ct. 481, 54 L. Ed. 678, 27 L. R. A. [n. s.] 493, 18 Ann. Cas. 1103; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106-108, 66 L. Ed.....; United States v. Reading Co., 226 U. S. 324, 367, 368, 33 Sup. Ct. 90, 57 L. Ed. 243; Hopkins v. United States, 171 U. S. 578, 598, 19 Sup. Ct. 40, 43 L. Ed. 290; United States v. Swift & Co. [C. C.], 122 Fed. 529, 531; Welton v. State of Missouri, 91 U. S. 275, 23 L. Ed. 347; Caldwell v. North Carolina, 187 U. S. 622, 629, 23 Sup. Ct. 229, 47 L. Ed. 336; United States v. Tucker [D. C.], 188 Fed. 741, 742; Marienelli v. United Booking Offices of America [C. C.], 227 Fed. 165; In re Selman Heating & Plumbing Co. [D. C.], 204 Fed. 839, 840, 841-843; Robbins v. Shelby Taxing District, 120 U. S. 489, 497, 7 Sup. Ct. 592, 30 L. Ed. 694; Globe Elevator Co. v. Andrew [C. C. A.], 144 Fed. 881, 882).

(2) Under these authorities the contracts evidenced by the unfilled orders were contracts and transactions in interstate commerce. The acts of the customers in sending the orders were initiatory acts in contracts

in interstate commerce. The receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contract and transactions in interstate commerce, and the direct restraint, and for a time the complete prevention and thereafter the particular prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping, or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act and brought the subject-matter of, the parties to the suit, and the relief the court granted far within the jurisdiction of the federal court under the Anti-Trust Act. Thus, Mr. Justice Harlan, delivering the prevailing opinion in Northern Securities Co. v. United States, 193 U. S. 197, 329, 24 Sup. Ct. 436, 453, 48 L. Ed. 679, said:

> "In United States v. E. C. Knight Company (156 U. S. 1), it was held that the agreement or arrangement there involved had reference only to the manufacture or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce, it would then have been covered by the Anti-Trust Act and would have been illegal."

And in Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 242, 20 Sup. Ct. 96, 107 (44 L. Ed. 136), the Supreme Court said:

> "When Congress has enacted a statute such as the one in question, any agreement or combina-

> tion which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national Legislature and violates the statute."

The execution of the combination or conspiracy of the defendants had exactly that effect. It directly operated and that operation was its patent and inevitable effect, not alone upon the manufacture, but upon the sale, transportation, and delivery of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce.

Moreover, the evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make, and deliver from the State of Missouri into other states where their customers received them. The evidence shows that the great body of the goods the plaintiff sold, made, and delivered were sold and shipped to customers in other states than Missouri; that two of the plaintiffs sold goods to the value of $2,950,000 per year; and that while the exact volume of the business of the other three does not appear, it is a fair inference from the proof that the five plaintiffs were pouring into the channels of interstate commerce goods of the value of at least $2,500,000 per annum. This course of business determined and demonstrated that the transac-

tions of these plaintiffs in causing and conducting these currents including the order contracts for the sale, making, transportation, and delivery of the goods in other states, the selling, the manufacture, the loading, shipping, and delivery of these goods at their destinations constituted interstate commerce (Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 401, 402, 403, 66 L. Ed. ...; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106, 109, 66 L. Ed. ...; Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 Sup. Ct. 244, 247, 66 L. Ed. ...; Swift & Co. v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 Sup. Ct. 101, 102, 103, 66 L. Ed. ...; United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 42 Sup. Ct. 105, 106, 66 L. Ed. ...). "When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle" (Swift & Co. v. United States, 196 U. S. 398, 399, 25 Sup. Ct. 276, 280 [49 L. Ed. 518]). And where customers in other states order goods to be made by sellers in Missouri and shipped to them in the other states, sellers accept such orders, agree to so sell, make, and ship the goods and do so, and this is a typical constantly recurring course of action, the cur-

rent thus existing is a current of commerce among the states and the manufacture of the goods pursuant to the contracts is as much a part of that interstate commerce as is the contract of sale or the loading, the shipment, or the delivery. "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are every flowing, are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control" (Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 403, 66 L. Ed. ...).

(3) The rights of the plaintiffs to keep their business running, to the continuous flow of their currents of interstate commerce, were property rights which they were legally entitled to exercise (Quinlivan v. Dail-Overland Co. [C. C. A.], 274 Fed. 56, 66; Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; King v. Weiss & Lesh Mfg. Co., 49 App. D. C. 377, 266 Fed. 257, 260).

(4, 5) Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made, but one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to

sell, make and deliver in interstate commerce, and their prevention of the flowing of the currents of these articles in interstate commerce was to deprive the plaintiffs of their income from the sales and deliveries of the goods, and by this continuing loss of income to compel the submission of the plaintiffs to their demands. Moreover, the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce, and this result was so evident and unavoidable that the defendants could not have failed to know, to purpose, and to intend that this should be the result. "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result." United States v. Patten, 266 U. S. 525, 543, 33 Sup. Ct. 141, 145 (57 L. Ed. 333, 44 L. R. A. [n. s.] 352); Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 245, 256, 257, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 213, 20 Sup. Ct. 96, 44 L. Ed. 136; Duplex Co. v. Deering, 254 U. S. 443, 463, 467, 468, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196. The defendants cannot be credited here with an innocent purpose or intent, and even if they could be they were guilty of

combining to use and of using unlawful means, assaults, threats, too many pickets, following employes to their homes, and like intimidating acts that scared the plaintiffs' employes to leave them and prevented those desiring employment from taking it. A combination or conspiracy to use unlawful means to accomplish a lawful purpose, and its execution by the use of such means, is as violative of the act as a conspiracy to accomplish an unlawful purpose by lawful means.

(6) It is contended that because manufacture is not commerce and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other states, and the prevention of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate

commerce, neither is buying or selling or contracting to buy or sell the goods or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps, which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court.

In United Mine Workers of America et al. v. Coronado Coal Co. et al., 258 U. S. ..., 42 Sup. Ct. 570, at page 583, 66 L. Ed. ..., the Supreme Court, summing up the relation of coal mining to interstate commerce, said:

> "Coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce, unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred."

The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce, its relation to interstate commerce is governed by the same rule. If the obstruc-

tion to it is intended directly to restrain interstate commerce, or if such obstruction necessarily has such a direct, material, and substantial effect to restrain it, that the intent so to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust Act. The case in hand falls directly under this rule. The obstruction and prevention of the manufacture of the articles which the plaintiffs had made interstate commerce contracts to make, sell, and deliver, and to pour into their continuously existing currents of interstate commerce, could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial, and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles and thus to deprive them of their income; nor could it have been made without their reasonably inferred intent and purpose to obtain that result.

While the law governing cases of this class is the same in all cases, the conspiracies alleged, the evidence to sustain them, and the results in the various cases necesarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States, and to prevent any interstate trade or commerce in the coal produced from nonunion mines. Thus the Court said:

> "The plaintiffs charge that there has been and is a continuously operating conspiracy between

union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it."

And it held that the plaintiffs were not entitled to recover against district No. 21 because "in a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in district No. 21 of 150,000 tons a week, 5,000 tons a week, which the Bache-Denman mines in most prosperous times could not exceed, would have no appreciable effect upon the price of coal or nonunion competition" (258 U. S. ..., 42 Sup. Ct. 570, 582, 584, 66 L. Ed. ...). And the Court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation. In the case before this court now the gravamen of the complaint is not that the defendants attempted to monopolize all interstate commerce, but that the defendants conspired and were executing that conspiracy by unlawful means to prevent if possible, and to restrain as far as possible the flow of the plaintiffs' existing continuous currents of interstate commerce and the performance of the interstate commerce contracts which they had made to sell, make and deliver the articles which were the subjects of that commerce to customers in states other than Missouri.

It was not essential to the right of the plaintiffs to relief by injunction by the court below that the object or effect of the defendants' conspiracy and its

execution should obstruct all interstate commerce or all interstate commerce in that class of articles with which the plaintiffs were conducting interstate commerce, or that it should increase the price of such articles throughout the country. It was sufficient that the defendants' conspiracy was with the necessarily inferred intent, and that, as unlawfully executed by them, it had the effect directly and substantially to interfere with, restrain and obstruct the large volume of interstate commerce which the plaintiffs were conducting to their irreparable injury. In the absence of the Anti-Trust Act, the plaintiffs had the right to conduct this interstate commerce. Congress has imposed no restraint upon it or them. The failure of Congress to impose any restriction on this commerce was in effect a declaration by that body that this interstate commerce should be free and untrammeled (Welton v. State of Missouri, 91 U. S. 275, 279, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691).

Not satisfied that this declaration by inaction was sufficient, the Congress granted to the federal courts the power to protect the freedom of this interstate commerce by the Anti-Trust Act. That act provides that—

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. St., Sec. 8820).

In the succeeding section it denounces the monopolization of any part of trade or commerce among the

states. While monopolies of interstate commerce and of parts of that commerce thus fall under the ban of the act, it denounces with equal force, clearness, and particularity every combination and conspiracy which directly and unreasonably restrains, interferes with, or obstructs, although it does not monopolize, or tend to monopolize, interstate commerce or any class of it. Direct and substantial restraint, obstruction, or destruction of interstate commerce, or of substantial parts of it, pursuant to a conspiracy or combination, is as violative of the act as a monopoly thereof.

In the Debs Case, 158 U. S. 564, at page 581, 15 Sup. Ct. 900, at page 905 (39 L. Ed. 1092), Mr. Justice Brewer said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this Court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. If a state with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?"

If the State of Missouri, by means of an act of its Legislature, had attempted to impose the restraint and obstruction upon interstate commerce which the defendants, through their conspiracy placed upon it in this case, the federal court, upon a proper applica-

tion, would without doubt have prevented the success of such an endeavor. That restraint and obstruction by the defendants clearly denounced as it is by the express terms of the Anti-Trust Act is much less justifiable than it would have been if imposed by the state.

Evidence of the interstate contracts, of the plaintiffs' currents of interstate commerce, of the unlawful acts of the defendants, of the times and manners of their commission, and of their direct and inevitable effect in preventing the performance of the plaintiffs' interstate commerce contracts, and in obstructing the currents of their interstate commerce, fully sustained the finding by the court below of the formation and existence of the conspiracy, of its execution by unlawful means, and of its inevitable effect, and well warranted the issue of the injunction.

In Gable v. Vonnegut Machinery Co. (C. C. A.) 274 Fed. 66, 71, 72, the complainant, the Vonnegut Machinery Company, was the agent of the defendant, the Toledo Machine & Tool Company, the manufacturing company, under a contract with the plaintiff to pay the latter 7½ per cent on the sale of the plaintiff's production in states other than that of the tool company. Complainant brought suit and obtained an injunction against the tool company and some of its striking employes on the ground that the latter had formed and were operating a combination to prevent and which did prevent the tool company from manufacturing its usual production, and thereby restrained its interstate commerce and deprived complainant of its commission under its contract. The Court held that the Vonnegut Company must be

aligned with the tool company and not against it. And that court finally held that—

> "The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant" (274 Fed. at page 74).

On the other hand, in the case at bar the evidence convinces that the obstruction of the manufacture imposed by the defendants' combination and its execution by means of their unlawful acts necessarily had such a patent, inevitable, direct, and substantial effect in obstructing and preventing the plaintiffs' interstate commerce, that their intent to stop it, and if they could not stop it to restrain it as much as possible, must be reasonably inferred.

Counsel for the defendants cite Crescent Oil Co. v. State of Mississippi, 257 U. S. 129, 42 Sup. Ct. 42, 66 L. Ed. ..., which did not arise under the Anti-Trust Act, but involved the question whether a cotton gin operating in Mississippi and ginning cotton which the owner of the gin had bought and caused to be shipped to it from another state was an instrumentality of interstate commerce in such a sense as to withdraw it from the regulatory power of the state; Hammer v. Dagenhart, 247 U. S. 251, 268, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724, which involved the constitutionality of the act of Congress to regulate the transportation in interstate commerce of articles produced by child labor; Capital Dairy Co. v. Ohio, 183 U. S. 238, 22 Sup. Ct. 120, 46 L. Ed. 171, which questioned the constitutionality of

the legislation of Ohio relating to oleomargarine; Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 23 Sup. Ct. 206, 47 L. Ed. 328, wherein the constitutionality, as against contracts made before its passage, of an act of the State of Wisconsin requiring corporations incorporated elsewhere to file copies of their charters, to pay small fees, and to meet certain other requirements as a condition of doing business in that state, was involved, and other authorities less relevant including those adjudging the time when articles flowing in the currents of interstate commerce make their entrance and exit from it and determining the line of damarcation between the exclusive power of the United States under the commerce clause of the Constitution and the police and regulatory powers of the states. In the opinions in many of these cases cursory remarks may be found about the relation of manufacture to interstate commerce and to commerce, but they fall under the familiar rule that the authority of expressions and statements in the opinions of courts is always limited to the specific question which they were considering and deciding when they were used. Cohens v. Virginia, 6 Wheat., 264, 399, 5 L. Ed. 257; United States v. Wong Kim Ark, 169 U. S. 649, 679, 18 Sup. Ct. 456, 42 L. Ed. 890; Traer v. Fowler, 144 Fed. 810, 817, 75 C. C. A. 540.

On the other hand, the Supreme Court has repeatedly sustained suits in equity under the Anti-Trust Act to enjoin the operation of combinations to restrain or obstruct interstate commerce by restraining or obstructing manufacture that constituted a part of or a step in such commerce. Addyston Pipe & Steel Co. v. United States, 175 U. S. 212, 240, 241, 246, 20

Sup. Ct. 96, 44 L. Ed. 136; Montague & Co. v. Lowry, 193 U. S. 38, 45; American Column & Lumber Co. v. United States, 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed..... In Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., 166 Fed. 254, 256, 258, 259, 92 C. C. A. 318, the plaintiff corporation, which had been engaged in importing raw sugar into Pennsylvania, there manufacturing it into refined sugar, selling and shipping it to customers in other states and countries, had ceased to do business during the Spanish War. That corporation, after consideration, formed the intention of engaging in business of that character again. The defendant corporation, which was engaged in the same class of business, conspired with one Segal, who held a majority of the stock of the plaintiff, to prevent the latter from again commencing the business contemplated, by making a large loan to Segal, taking his stock and the authority to vote it as security for the payment of the loan, and by the exercise of this voting power prevented the plaintiff from again commencing its business of manufacturing and selling refined sugar in interstate commerce. The plaintiff's action was for treble damages under the seventh section of the Anti-Trust Act. U. S. Comp. Stat., Sec. 8829. The first defense was that the conspiracy charged related to manufacture and was consequently exempt from the prohibition of the Anti-Trust Act, and United States v. E. C. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, was cited. But the Circuit Court of Appeals of the Second Circuit held that the conspiracy was not violative of the act in the Knight case only because it did not directly restrain interstate commerce, but that the alleged

conspiracy in the Pennsylvania Refining Company's case to prevent the latter from manufacturing, selling and shipping refined sugar at all naturally, directly and inevitably restrained interstate commerce and entitled the plaintiff to relief under the Anti-Trust Act.

When the combination or conspiracy of the defendants in this case was formed and when its execution commenced, by the strike, by the withdrawal at one time of nearly all the plaintiffs' workmen, the quick picketing with too many pickets of their plants, and the complete stoppage of their manufacture for the time being, the plaintiffs had made unfilled interstate commerce contracts to sell, make and ship to their customers in other states goods of the value of more than $300,000. They had existing continuously flowing currents of interstate commerce from Missouri to other states in the nation which carried their goods of the value of more than $2,500,000 per annum. In the execution of their combination, by too many pickets, by intimidation by numbers, by threats, by following to their homes, and by other unlawful and violent acts, the defendants scared many of the plaintiffs' remaining employes into withdrawing from their employment, and deterred those who wished to work for the plaintiffs from taking employment to such an extent that until they were restrained by the preliminary order of the court below they prevented the making of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce and stopped the flow of the plaintiffs' currents thereof. And after the restraining order was issued they continued the execution of their conspiracy and their un-

lawful acts to such an extent that they continued to obstruct and restrain to a very large and damaging extent the amount of the plaintiffs' manufacturing and of their interstate commerce, so that but a small per cent of their normal currents of interstate commerce could flow. The necessary and inevitable effect of this prevention and restriction of the making of the articles the plaintiffs had contracted to make, sell and deliver was to prevent for a time and drastically restrain their interstate commerce. The defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands could not have been unaccompanied with their intent and purpose to prevent, if possible, and, if not, to restrict their interstate commerce and thus to stop or diminish their income, for only by such stoppage or diminution would the stoppage or restriction of manufacturing inflict the compelling injury they sought to impose. The defendants are estopped from denying the necessary direct inevitable effects of their acts. The prevention for a time and the subsequent restriction of the intermediate step of manufacturing the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce necessarily had such a direct, material, substantial and inevitable effect to restrain the interstate commerce of the plaintiffs that the defendants' purpose and intent so to do must be reasonably inferred, both as a matter of fact and as a matter of law; as a matter of fact, because the evidence produces an abiding conviction that such was the intent and purpose of the defendants, and as a matter of law because they are estopped from deny-

ing that they had the intent and purpose to produce the direct, natural, necessary and inevitable consequences of their acts. The decree below must accordingly be, and it is,

Affirmed.

Reference is made to the opinion of this court in Silverstein v. Local No. 280 of the Journeymen Tailors' Union et al., 284 Fed. ..., which is filed herewith.

APPENDIX C.

Dissenting Opinion of Judge Stone.

Stone, Circuit Judge (dissenting).

This is an appeal by a labor organization, certain officials and members thereof from a final decree of injunction.

Appellants contest the jurisdiction of the Court as a federal court. There is no longer room to question the applicability of the Sherman Act, within the limits of the Clayton Act (38 Stat. 730), to labor organizations and strikes. But the Sherman Act relates solely to interstate commerce, and the contention made here is that this conspiracy has no legal connection with interstate commerce. The facts necessarily bearing on this jurisdictional question are as follows: Appellees are trunk manufacturers. A part of their products are shipped in interstate commerce. Appellants desired to unionize the plants of appellees. If peaceful means failed, they designed to call a strike and so picket the plants as to prevent their operating until the appellees would submit to unionizing the plants. In pursuance of this plan, strikes were called and picketing put in operation. The evidence substantially shows that this picketing was conducted in an unlawful manner. **No attempt was made to prevent appellees from shipping any manufactured products or from receiving any raw material. There was no boycott of appellees' products or customers, no interference with interstate transportation, no purpose to interfere with such com-**

merce. The conspiracy was confined to preventing manufacture. The purpose of the conspiracy was to accomplish unionization by preventing manufacture and in no way includes as an object preventing appellees, by boycott or otherwise, from purchasing, selling, sending, or receiving products or materials. The jurisdictional question turns, therefore, on the point of whether a conspiracy for the sole purpose of unionizing a manufacturing plant is a restraint of interstate commerce because some of the articles which are prevented from being made are intended for interstate commerce and would normally enter therein.

My associates deem this situation reveals a conspiracy to interfere with interstate commerce, within the meaning of the Sherman Act. The points they make in their able opinion are: (1) That the manufacture of articles contracted, intended, or normally going into interstate commerce, constitutes a part of interstate commerce; (2) that where the purpose of the conspiracy is to prevent the manufacture of such articles, the inevitable effect is to interfere with interstate commerce, therefore an intent to so interfere must be inferred and the conspirators be estopped from denying that such was the actual intent; (3) that the means of executing the conspiracy were unlawful. **I cannot concur in these views or the conclusion reached, because I think controlling decisions of the United States Supreme Court are to the contrary.**

As to the contention that because an article is contracted for, intended for, or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon

the argument that if the manufacture is prevented, the article cannot enter interstate commerce, and therefore manufacture is an "intermediate step" in and an integral part of such commerce. **This is patently true as a result of logical reasoning,** but is it true when the problem before the Court is to define that **somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation?** Such a problem must be solved along "practical" as well as logical lines. As said in Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611, at page 616, 23 Sup. Ct. 206, at page 208 (47 L. Ed. 328):

> "In modern societies every part is related so organically to every other, that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made. See, further, Kidd v. Pearson, 128 U. S. 1, 21; Coe v. Errol, 116 U. S. 517, 525, 527; Tredway v. Riley, 32 Neb. 495."

If this were otherwise, as said in Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), "all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Con-

gress the authority to regulate commerce among the states. Kidd v. Pearson, 128 U. S. 1, 21."

In both of the preceding quotations, citation is made of Kidd v. Pearson, 128 U. S. 1, 21, 9 Sup. Ct. 6, 32 L. Ed. 346. The reasoning contained in that citation, approved in these later cases, as set out on page 21 of 128 U. S., on page 10 of 9 Sup. Ct. (32 L. Ed. 346), is as follows:

> "If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are, and must be, local in all the details of their successful management.
>
> "It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme,

when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

"It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulation against conflicting and discriminating state legislation. (See, also, County of Mobile v. Kimball, supra, at page 697.)

"This being true, how can it further that object so to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but

still there would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the state; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the state governments, and more provocative of conflicts between the General Government and the states, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine."

In applying this rule of practical logic to the question of whether or not manufacture of an article of interstate commerce is, as such, a part of interstate commerce, I find, as it seems to me, a long, unbroken line of decisions to the effect that it is not. These decisions, many in number, began in 1885 with Coe v. Errol, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715, and came down to June, 1922, with the noted case of United Mine Workers of America v. Coronado Coal Co.

From these cases I will select a few quotations which, in my judgment, sustain the view that manufacture of articles to be shipped in interstate commerce is not a part of interstate commerce within the meaning of the Constitution, as construed by the Supreme Court. I am impelled to do so by my high regard for the ability and learning of the judges with whom I feel compelled to differ in this case. I shall endeavor, carefully, to choose, and italicize in part,

extracts which were not merely vagrant expressions of the Court but such as were made directly applicable to determination of the issues there involved.

In the United Mine Workers' case, supra (decided June 5, 1922), this Court was reversed for holding that mining coal was interstate commerce. The facts and issues in that case seem to me directly controlling here. There was a strike, the purpose of which was to unionize the mines in a certain locality. Here the strike was to unionize certain trunk factories, all of which were located in St. Louis, Missouri. Unlawful means were there, as here, used to carry on the strike; the only difference being that in that case such means went to the further extent of murder, riot and arson. In that case, Chief Justice Taft, for the Court, said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, we said: 'The making of goods and the mining of coal are not [interstate] commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof (Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439).' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

In Lemke v. Farmers Grain Co. (decided February 27, 1922) the Court said:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line

between state and federal authority under facts presented which required a definition of interstate commerce where the right of state taxation was involved, or **manufacture** or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here."

In Crescent Cotton Oil Co. v. Mississippi (decided November 14, 1921) the Supreme Court considered the question of whether the Anti-Gin Act of Mississippi (Laws Miss. 1914, c. 162) interfered with interstate commerce. On that point the Court said:

"It is clear that these decisions cannot be of aid in determining the question we are now considering, which is whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the state, for its use in another state, all of the cotton seed which may be purchased in connection with its ginning operations. * * *

"The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short, but important, step in the manufacture of both the seed and the fiber into useful articles of commerce, **but that manufacture is not commerce** was held in Kidd v. Pearson, 128 U. S. 1, 20, 21; United States v. E. C. Knight, 159 U. S. 1, 12, 13; Capital City Dairy Company v. Ohio ex rel. Attorney-Gen-

eral, 183 U. S. 238, 245; McCluskey v. Marysville & Northern Railway Company, 243 U. S. 36, 38, and in Hammer v. Dagenhart, 247 U. S. 251, 252; Arkadelphia Milling Company v. St. Louis & Southwestern Railway Company, 249 U. S. 134, 151, 152. **And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce** (Coe v. Errol, supra, and New York Central etc. Company v. Mohney, 252 U. S. 152, 155). When the ginning is completed the operator of the gin is free to purchase the seed or not, and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or to ship it out of the state for use in another, and, under the cases cited, **it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power.**

"The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede, **but are not a part of, interstate commerce**, renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

In Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), the Court said:

"When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were in-

tended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

"Commerce 'consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' **The making of goods and the mining of coal are not commerce,** nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof (Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439).

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but **the production of articles intended for interstate commerce is a matter of local regulation.**

"'When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state' (Mr. Justice Jackson in Re Green, 52 Fed. Rep. 113). This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1, 21)."

In Kidd v. Pearson, 128 U. S. 1, at page 20, 9 Sup. Ct. 6, at page 10 (32 L. Ed. 346), the Court said:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this Court in County of Mobile v. Kimball, 102 U. S. 691, 702, is as follows: 'Commerce with foreign countries, and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with

an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

In Capital City Dairy Co. v. Ohio, 183 U. S. 238, at page 245, 22 Sup. Ct. 120, at page 123 (46 L. Ed. 171), the Court said:

"The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All the acts of the corporations which were complained of related to oleomargarine **manufactured by it in the State** of Ohio, in violation of the laws of that state, and therefore operated on the corporation within the state and affected the product manufactured by it **before it had become a subject of interstate commerce** (Kidd v. Pearson, 128 U. S. 1; United States v. E. C. Knight Co., 156 U. S. 1). It results that the plaintiff in error is not in a position to assail the validity of the statutes, because of their supposed operation upon interstate commerce, and we are not called upon to express an opinion respecting the constitutionality of the statutes upon this assumption."

The cases from which the above notations are taken, as well as the many other similar decisions

cited in those cases, establish the doctrine that the manufacture of goods which are to be later transported in interstate commerce is not a part of interstate commerce.

As to the second point in the majority opinion, to wit, the intent to interfere with interstate commerce: It is undoubtedly the law that a conspiracy formed with the specific intent to interfere with (usually by restriction of) interstate commerce is within the domain of national control and subject to the Sherman Act. This is true irrespective of the means employed toward its execution. Because this is so, there are cases in which the act has been held applicable where the means happened to be control of or prevention of production of the particular article of interstate commerce. Such are American Column & Lumber Co. v. U. S., 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed. (decided December 19, 1921); U. S. v. Reading Co., 226 U. S. 324, 33 Sup. Ct. 90, 57 L. Ed. 243. But, in that character of cases, it was not the means employed to effectuate the conspiracy that brought it within the federal control. It was the specific, actually existing unlawful intent and purpose of the conspiracy which had that effect.

This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing and, if possible, preventing complainants from manufacturing their products. This was to be

brought about by preventing them procuring the necessary labor except through employment of members of the union. But **there was no specific purpose or intent to affect interstate commerce such as was alleged, for example, in the United Mine Workers' Case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character.** That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found, it must be imputed, as matter of law, not fact, from the circumstances that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce.

It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here again this logic and rule must be applied in a practical way. If it is not so applied the entire police power of the states is in danger of absorption by the national government. This is true because, in our complex social and economic life, production, as well as manufacture, of all kinds of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be distinguished from those which

affect it directly. The former are without, the latter are within, national control.

United Mine Workers v. Coronado Coal Co., supra;
U. S. v. Patten, 266 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325;
Ware & Leland v. Mobile County, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031;
Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297;
Leloup v. Mobile, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311—
And many other cases.

Whether an act, a course of conduct or a state statute affects interstate commerce incidentally or directly, within the above rule, depends upon the circumstances of each particular case. It is not shown, in this evidence, that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars' worth of goods annually and that much of this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in U. S. v. Patten,

226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325, and similar cases.

To my mind, the facts of this case are much stronger than the United Mine Workers' Case, supra, and there the Supreme Court found no jurisdiction, although it said:

> "The circumstances are such as to awaken regret that, in our view of the general jurisdiction, we cannot affirm the judgment."

The consequences of a legal rule are often useful in testing its accuracy. **There can be no shadow of doubt as to the consequences of the rule laid down in the majority opinion. The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.** Moreover, if this true as to the products produced in such industry or factory, it is entirely logical the same rule should apply to the raw materials used in such production if any of them are subjects of interstate commerce. In a practical sense, this would result in all strikes being subject to federal jurisdiction, because scarcely any factory is so small that some of its finished products do not enter into interstate commerce. **And yet the Supreme Court has, within the six months, held that a strike in a mine shipping seventy-five per centum of its coal in interstate commerce and involving many miners and much property was without the federal jurisdiction** (United Mine Workers' Case, supra), and that Court has never departed from, but has repeatedly and recently affirmed, the

doctrine, announced almost forty years ago, that manufacturing of interstate products is not interstate commerce.

As to the third basis of the majority opinion—that the means employed to execute this conspiracy were unlawful: Such means included intimidation and violence. The unlawful character of intimidation and violence is beyond question, but that has nothing to do with the question of whether punishment therefor or prevention thereof should be in the state or in the federal courts. In the United Mine Workers case, supra, the means employed were far more vicious than here, including arson, riot and murder. Yet it was not even suggested, in that bitterly contested case, that the means employed by the strikers had anything whatever to do with the jurisdiction of the court.

For the above reasons, I find myself unable to concur in the result or reasoning of my able associates, and therefore dissent therefrom. I am further sustained by the case of Gable v. Vonnegut Machinery Co., 274 Fed. 66, recently decided by the Court of Appeals for the Sixth Circuit. In that case, by far the greater part of the products manufactured, in the plants affected, went into interstate commerce and contracts were in existence for much of such future product. In discussing the scope of the Sherman and Clayton Acts that Court said (page 73):

> "Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and imme-

diately relate thereto. Manufacturing is not commerce. None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interferes with the manufacture of his products which are sold generally in interstate commerce."

The Court further said (page 74):

"The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant. The fact that shipment was interfered with, only because goods were not manufactured, merely incidentally and indirectly affected interstate commerce."

APPENDIX D.

Brief in Support of Petition for Rehearing.

Notwithstanding the carefully reasoned and able opinion of the majority of this Court in this case, we are still profoundly convinced that articles in process of manufacture or manufactured within the state, even though part or the greater part of these articles were contracted to be shipped in interstate commerce, can, in the light of the numerous decisions of the Supreme Court of the United States to the contrary, be held to form a part of interstate commerce so as to give to the federal courts jurisdiction, exclusive or otherwise, to determine controversies regarding such articles between citizens and corporations of the same state.

If an interference with interstate commerce can be legally inferred from any act whatever, where such act has the effect to create such interference indirectly, then we submit that it will not to any appreciable extent tax the ingenuity of persons seeking the interpositnon of the federal courts to the exclusion of the courts of the state to lay the basis for such jurisdiction by the mere assertion or averment in their petitions and the proof in the support of same that they are unable to fill their interstate commerce contracts because the parties on whom they sought to fasten the responsibility either did or neglected to do some act which had the effect of preventing the former from fulfilling such contracts.

Thus, if A be a manufacturer in Missouri and B a resident of the same state, owes him a considerable

amount of money, and A needs that money to purchase materials or pay the help engaged in the production of articles intended or contracted to be shipped in interstate commerce, then upon a mere allegation that B, by refusing to pay him the money which he owes, has prevented him from fulfilling his contract to manufacture and ship the articles to customers outside of the state, A can (it seems to us), in the light of the opinion of this Court, assert an exclusive jurisdiction in the federal court of his claim against B for the money due.

And thus in a mere, simple contract of purely local concern and plainly detached from interstate commerce it is made possible in the enforcing of same for the party entitled to the benefit of the contract to seek his remedy in the federal court and to divest the state courts of the jurisdiction which properly belongs to them.

No matter how plausible the argument, or how well and closely reasoned the logic which leads to a condition of this sort, the condition itself is so plainly and violently at variance with the limitations imposed upon federal authority by the states, and so sweeping an encroachment upon the sovereignty and independence of the states themselves as to lead to the inevitable conclusion that the commerce clause of the United States is the death-trap of all state rights, and the whole scheme of our government system, epitomized in the declaration of an "indestructible Union composed of indestructible states" has been undermined and the authority of the states as independent sovereignties has passed to the centralized power, with all the disastrous effects which his-

tory teaches naturally and inevitably flow from centralization.

In the famous case of Texas v. White, 74 U. S. Reports 100 at 725 (7 Wall. 725), within short compass Chief Justice Chase has pointed out with a lucidity and directness that needs no elaboration the distinction between the rights of the federal government and the rights of the states under the Constitution of the United States in the following language:

> "Under the articles of Confederation each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States under the Constitution are reserved to the states, respectively, or to its people, and it may be not unreasonably said that the preservation of the states and the maintenance of their government are as much within the design and care of the Constitution as the preservation of the union and the maintenance of the national government.
>
> "The Constitution in all its provisions looks to an indestructible union composed of indestructible states."
>
> County of Lane v. State of Oregon, 74 U. S. Reports, page 76,

and we can't help thinking that the principle of constitutional law above declared is securely embalmed in the decision of the majority of the members of this Court in the instant case.

To this we take leave to add that, in our humble judgment, the liberal interpretations given to the

commerce clause in the early decisions of the Supreme Court of the United States were aimed at construing the Constitution as allowing to the national legislature that discretion with respect to the means by which the powers it confers are to be called into execution which would enable that body to perform the high duties assigned to it in the manner most beneficial to the people (McCulloch v. the State of Maryland, 4 Wheat. 316), but, as stated in Martin v. Hunters Lessee, limited this interpretation so as to preserve intact the powers that properly belong to the state in the following language:

> "The Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication."

Continuously flowing currents of interstate commerce may be in the descriptive sense a picturesque and beautiful metaphor, but as applied purely to the interruption of or interference with process of manufacture it cannot logically become the basis of any rule attempting to define the point where state control ends and interstate control begins. Upon the contrary, it will, in our judgment, lead to a confusion which will make it impossible to preserve the distinction, for confusion will always follow where any other basis of distinction is made in relation to state and federal control of goods than the rule supported by the great weight of authority and never departed from, at least, by the Supreme Court of the United States, and which removes every species of perplexity from the solution of this question, and that rule as an-

nounced in Kidd v. Pearson, 128 U. S. Reports 120, 121; United States v. Knight, 156 U. S. 112, 113; Lenke v. Farmers Grain Company (decided February 27th, 1922), and the other authorities cited in the appellants brief is:

> "Goods become the subject of interstate commerce when they begin their interstate journey by a delivery to a carrier or otherwise by passing beyond state authority into the domain of federal control."

His Honor, Judge Stone, in his dissenting opinion in this case, stated that he could not concur in the views or conclusions reached by his associates because he thought controlling decisions of the Supreme Court are to the contrary. In this we humbly submit that he was right. Outside of the mere personal gratification of the advocate who finds his contentions upheld, we yield our respectful tribute of admiration to an effort worthy of the finest traditions of federal jurisprudence in the upholding of a great fundamental principle of our Government, which if once abandoned will leave but a debris of what once was a great nation composed of free and independent states.

Impressed with the gravity of this decision as bearing upon the question of the relations between federal and state governments, the distinguished jurist has not only pointed out the disastrous effect which will inevitably flow from federal control of state jurisdiction, but has, in our humble judgment, irrefutably demonstrated the absolute lack of proof in this case that the object of the strike was to interfere with interstate commerce. In his opinion, we think we are upheld upon the proposition that the proof of a con-

spiracy, its intent and purpose must be established either directly or by facts which indubitably point to its existence, and that it can never be inferred from the effect alone.

We, therefore, shall not be guilty of the impertinence of attempting to enlarge upon the matters and questions which he has so ably discussed, but rest our argument upon his opinion as the most logical and convincing reasons for the granting of this petition.

As counsel for the appellants of the above cause and in such capacity charged with the responsibility of its conduct in the trial court and in this court, we respectfully disclaim having made the argument in any of these courts attributed to us on page 6 of the majority opinion, either in brief or orally, viz., "that the only purpose of the defendants was to force the plaintiffs to employ none but union men"; upon the contrary, we pointed out in brief with all the emphasis that we could command (see page 83, printed record) "that not only was there no proof offered in the evidence of the existence of a conspiracy on the part of the defendants to bring about the 'closed shop' policy in the factories of the plaintiffs," but counsel for the plaintiffs objected to any evidence being given on the part of these defendants as to cause which led up to the strike (see page 167 of printed record), which objection was sustained by the trial judge as the basis of this ruling declared the defendants had the right to strike. (See page 84 of printed record.)

We also respectfully submit that the statement appearing in the majority opinion, page 15, as a conclu-

sion of fact "that the defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands" could not have been accompanied with their intent and purpose to prevent, if possible, and if not, to restrict their interstate commerce, was not based upon any evidence appearing in the record, as an examination of the pages to which we have just referred will show, nor do we think that the existence of such a purpose can even be logically held within the limits of the extended application of the doctrine of intent as defined in the majority opinion.

It is true that the bill of complaint of the plaintiffs charged the existence of a conspiracy on the part of the defendants for the avowed object of forcing the plaintiffs to adopt the "closed shop" policy, but it is equally true that not only did the plaintiffs fail to make any proof of the existence of a conspiracy for such a purpose, but strenuously objected to the defendants' attempt to show that no such purpose existed, and to this we will add that such purpose could not have existed, for the plaintiffs prior to the strike were maintaining closed shops.

We respectfully call the attention of the Court to the fact that the proof of three essential elements of a conspiracy is missing in the present case. These are:

(a) The confederating—the combining together of two or more persons.

(b) The intent—for the purpose.

(c) The object—of doing something unlawful or oppressive or immoral as a means to an end.

Eddy on Combinations, Vol. I, Sec. 265, p. 238.

There was no proof of any conspiracy on the part of the defendants; there was especially no proof of the purpose as stated in the petition on the part of the defendants to bring about the "closed shop" policy, and there was no proof of the objects of such a conspiracy, for that, too, was to bring about the closed shop policy, as alleged.

> "The intent is a vitally essential element. There can be no conspiracy without a purpose expressed or implied to do something unlawful, oppressive or immoral as a means to an end, and before parties can be convicted of a conspiracy the elements of wrongful intent must be as fully proven as the element of confederating."
>
> Eddy on Combinations, Vol. I, Sec. 369.
>
> "Whether the proof be direct or circumstantial, it must show what was the purpose of the combination."
>
> Eddy on Combinations, Vol. I, Section 369, page 241.

It is but natural that the trend of the judicial mind should lean strongly against an interference with a control of their business by the owners of same. The great economic questions which underlie the relations of capital and labor are forgotten and the strictest and sometimes the harshest limitations are placed upon the rights of labor to organize and to protect its interest, and this probably is responsible for a laxity in the application of the rules of evidence which finds no precedents in other cases.

The appellants strongly objected at the trial of this cause to the introduction of testimony in support of

the allegation of a conspiracy of persons not shown to be affiliated with their organizations, and whose names or identity were not even disclosed. The record teems with this sort of evidence. The impossibility of making a defense to this class of testimony is the most eloquent testimony to its unfairness.

> "It is fundamental that no evidence ought in strictness to be given by strangers to the record in order to affect the defendants until the fact of a conspiracy with them is shown."
>
> Greenleaf on Evidence, Vol. I, Section 92.

Most of the evidence offered on the part of the plaintiffs against these defendants was that of entire strangers to the record, many of whom were not named, and although the trial court ruled that this evidence should be connected up and that the defendants should be connected with it, yet such testimony in large part forms the basis of the majority opinion of this Court, that the defendants were guilty of the acts charged against them.

We understand that very recently, in the opinion not yet published, the Circuit Court of Appeals for the Seventh District has held in the case of Danville Local Union 115 of the United Brick and Clay Workers v. Granville Brick Company, where a similar state of facts as in the instant case existed, that interference with the manufacture of goods, although intended for interstate shipment, did not give the federal courts jurisdiction in an injunction proceeding.

We respectfully submit that a rehearing of this appeal should be granted.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

I, John P. Leahy, hereby certify that I am the solicitor and of counsel for the above-named appellants and petitioners; that I personally attended the taking of all the testimony in the above-entitled cause; that I have carefully examined the record, opinion and briefs therein; that I am duly authorized by the appellants to execute and present the foregoing petition for rehearing; that I prepared said petition and believe the statements therein made to be true; that I believe this Court erred in its decision as specified in the foregoing petition and that appellants have a just and meritorious cause for rehearing.

Dated this 9th day of December, 1922.

John P. Leahy,
Solicitor and of Counsel for the
Appellant Petitioners.

Subscribed and sworn to before me this 9th day of December, 1922.

My term expires February 22, 1926.

Harriet Cox,
(Seal) Notary Public.

FILED
JAN 22 1924
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66, et al.,
Appellants,
v.
HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Appellees.

No. 233

BRIEF OF APPELLEES.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

St. Louis Law Printing Co., 415 N. Eighth St. Main 1819, Central 919.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66; A. M. REUTER, A. L. BIRKENMEIER, H. EHLENBECK, CHARLES KAYSING, JOHN SMITH, MICHAEL LITTLE, JOHN LECHNER, CHARLES MORGAN, PAUL BERRY, EDWARD SCHILLING, AMBROSE KINTZ, STEPHEN WILHELM, WALTER DECHANT, ESTHER BRADLEY, NORA WIELAND, MALLEY COLLEY, WALTER FLEHER, THOMAS HALLIBURTON, J. PERRY, JOHN REMSTEDT, CHARLES REUBEN, HENRY SCHNITZ, THEO. SUMMERS, CHARLES TADESCO, FRED TENTSCHERT, RAY WATKE, WALTER WEBBER, JOHN ZIMMERMAN, HERMAN DIECKHORNER, JOE KUHN, WM. BALMER, ROBT. GINNER, TOM CAITO, FRANK CAITO, RUDOLPH KOOB, ANTON PAULEY, LEO PAULEY, ROBERT WARSING, STEVE ZOELLER, TONY SANSON, ANNIE STECKER, SYLVESTER SCHNITZ, GUS NENNINGER, GEORGE WENK and BENJAMIN SCHNITZ,
Appellants,

v.

HERKERT & MEISEL TRUNK COMPANY, a Corporation; P. C. MURPHY TRUNK COMPANY, a Corporation; JAMES A. QUIRK TRUNK COMPANY, a Corporation; STABILITY LEATHER GOODS MANUFACTURING COMPANY, a Corporation, and H. A. KOLB TRUNK & CASE COMPANY, a Corporation,
Appellees.

No. 878.

BRIEF OF APPELLEES.

STATEMENT.

This suit was commenced in the District Court of the United States for the Eastern District of Mis-

souri, by five corporations organized under the laws of Missouri. The petition stated that each of the plaintiff corporations was engaged in the manufacture of trunks, leather goods and leather bags; that each had been so engaged for a number of years, and had built up a large and valuable manufacturing business, and was engaged in shipping its products in interstate commerce; that each of the plaintiffs had a large number of customers in various cities and territories of the United States to which it had been shipping its products in interstate commerce; that each had accepted orders for goods to be shipped in interstate commerce; that its customers were demanding the filling of these orders, and that such orders would be canceled unless shipments were made promptly. It was furthermore stated that each of the plaintiffs was receiving large quantities of raw materials from which trunks, leather goods and leather bags were manufactured, which raw materials were shipped to the plaintiffs in interstate commerce. The petition charged that the defendant United Leather Workers International Union Local Lodge No. 66 and the individual defendants named as officers, members or agents of said union had determined that the plaintiffs should enter into a contract with the union, by the terms of which contract the plaintiffs should agree to employ none but union labor in their factories, and, to compel the plaintiffs to sub-

mit to this demand of the defendants, the defendants had conspired together and with persons unknown to prevent plaintiffs (until they acceded to the demands of the defendants) from carrying on their interstate commerce by boycotting plaintiffs, and by inaugurating a strike against the plaintiffs, by preventing the employes of plaintiffs from continuing their employment, by assaults, abuse and other unlawful means, and thereby preventing plaintiffs from manufacturing the goods necessary to the carrying on of their interstate commerce.

The petition further charged that at the time the defendants entered into the conspiracy referred to, defendants well knew that plaintiffs were engaged in interstate commerce, and that the unlawful acts charged to have been committed by the defendants had prevented the plaintiffs from continuing their interstate business; that the defendants were endeavoring to destroy this interstate business, and declared that they would continue to do so unless plaintiffs acceded to the demands of the defendants.

The petition alleged that in pursuance of the conspiracy described the defendants inaugurated a strike of the employes of plaintiffs and proceeded to picket plaintiffs' places of business, and to assault, threaten and abuse plaintiffs' employes, and to intimidate persons seeking employment, and that by such means

prevented plaintiffs carrying on their interstate commerce business.

Plaintiffs prayed for an injunction to prevent the unlawful practices referred to. Upon an answer being filed and a trial having been had, the Court found the issues in favor of the plaintiffs and issued the injunction prayed for. The District Court rendered a written opinion containing its finding of facts and conclusions of law. The Circuit Court of Appeals concurred in the findings of the District Court as to the facts, and as this Court has made it a rule not to disturb the findings of fact of two lower courts (Washington Securities Co. v. U. S., 234 U. S. 76; E. L. Waterman Co. v. Modern Pen Co., 235 U. S. 88; Mo. R. Co. v. Omaha, 235 U. S. 121; Texas & Pac. R. R. Co. v. R. R. Commissioners, 232 U. S. 338), the facts to which your Honors' attention will be called are limited to those disclosed in the opinion of the District Court and that of the Circuit Court of Appeals for the Eighth Circuit. They are as follows:

Plaintiffs, and each of them, are engaged in the manufacture of trunks, valises, handbags and similar articles, which they sell on orders in the State of Missouri and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiffs' business consists in sales on orders for

their products in states other than the State of Missouri.

At the time of the strike hereinafter referred to plaintiffs had accepted orders for goods to be shipped in interstate commerce in the amounts as follows: Herkert & Meisel Trunk Company, $200,000.00; James A. Quirk & Company, $15,000.00; F. A. Kolb Trunk and Case Company, $5,000.00; Stability Leather Goods Company, $32,000.00; P. C. Murphy Company, $75,000.00—a total of $327,000.00. At that time these plaintiffs had a continuous flowing current of interstate commerce from Missouri to other states which carried their goods of a value of more than $2,500,000.00 per annum.

The strike was called after a fruitless effort to agree upon wages and upon a contract embracing the terms and conditions of future employment of the employes.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employes of the plaintiffs quit plaintiffs' employ.

Thereafter, and until the temporary restraining order was issued herein, the several shops of plaintiffs were picketed by striking employes; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs or some of them. During this picketing

many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employes and divers employes who continued in the employment of plaintiffs vile and opprobrious names; there were instances of domiciliary visits, accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers, so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. In fact, the large proportion thereof which plaintiffs would have made but were, in the mode above mentioned, prevented from making would have been shipped when manufactured to other states to fill what is known in the record as "interstate orders."

There was no actual interference with or hindrance of any interstate movement or shipment of any goods made by plaintiffs, but the necessary and inevitable effect of the prevention and restriction of the making of the articles that plaintiffs contracted to make, sell and deliver, was to prevent, for a time, and drastically restrain planitiffs' interstate commerce. It was the purpose and intent of the defendants to prevent, if possible, and if not, to restrict, plaintiffs' interstate commerce, and thereby cause plaintiffs loss

of income and injury and force plaintiffs to accede to the demands of the defendants.

The District Court expressed its finding, with respect to the existence of the conspiracy charged in the petition, in the following language:

> "I conclude that the facts and circumstances disclose a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit."

ARGUMENT.

The pleadings and proof disclose that the five plaintiffs are large manufacturers of leather goods. They are all located in the City of St. Louis, Missouri, which is a large manufacturing and commercial center. In this large manufacturing and commercial center the plaintiffs are the only concerns engaged in the manufacture of trunks, leather goods and bags. They do all the business in these articles originating in this large commercial center. The larger part of this business is interstate in character. Only a small part of their products are sold in the State of Missouri. Their interstate business exceeds $2,500,000.00 a year. At the time of the events complained of in the petition, each of the plaintiffs had unfilled "interstate orders"—that is, accepted orders to be manufactured and shipped to customers in other states. The defendants were, at the time of the happenings disclosed in the evidence, their employes, the labor union to which they belonged, and the officers thereof.

The pleadings and proof disclose a quite common succession of events in labor disputes.

First, the defendants formed the purpose of completely unionizing the factories of the plaintiffs.

Secondly, they attempted to accomplish this pur-

pose by negotiations with plaintiffs. In this they failed.

Thirdly, they conspired together to destroy the business of plaintiffs until such time as plaintiffs would consent to the unionization of their factories.

It is the third of these succession of events of which the plaintiffs complain. We may concede that the first—the formation of the purpose to unionize plaintiffs' factories—was a lawful one. We may concede that the second—the attempt to accomplish this purpose by negotiation—was a lawful one. As to this no complaint is made. But as to the third—the formation of the conspiracy to destroy plaintiffs' business, and the acts done in pursuance thereof—plaintiffs say these were violative of the Anti-Trust Act, because by this conspiracy and its execution, a direct restraint was intended and placed upon the interstate business of the plaintiffs.

It is essential that the precise objects of the conspiracy complained of be kept in mind. This is so because, unless the conspiracy and the acts done in pursuance of it, have a direct relation to interstate commerce, the District Court had no jurisdiction of the suit. On the other hand, if the object of the conspiracy was a destruction or restriction of interstate commerce, and if the means contemplated and adopted in the carrying out of the conspiracy materially affected interstate commerce, then they were

violative of Anti-Trust Act, and the District Court did have jurisdiction.

In arriving at an understanding of the precise nature of the conspiracy complained of, it may be said that plaintiffs do not complain of the formation of the defendants' purpose to unionize their factories. Nor do they complain of the fact that the defendants entered into negotiations with them for the purpose of securing the unionization of their factories. These happenings are recited in the petition merely to inform the Court of the situation prior to the time that the unlawful conspiracy is charged to have been formed, and is explanatory of the circumstances under which the conspiracy was resorted to. They are not alleged as parts of the conspiracy, but as antedating the conspiracy. The conspiracy was formed after negotiations had failed. The lawfulness or unlawfulness of the conspiracy is not to be judged by what preceded it. It is not to be judged by the purposes inspiring the defendants prior to its formation, rather, it is to be judged by what they agreed to do, and did do, and the immediate objects they had in mind to accomplish by their acts. What was it they agreed to do, and what were their immediate objectives?

Simply stated, their immediate object was the destruction of plaintiffs' business; that is what the petition charged them with conspiring to do, and that

is what the District Court and the Circuit Court of Appeals have found they conspired to do. This was the primary thought in their minds. True, the destruction of the plaintiffs' business was a part of their general plan to unionize plaintiffs' factories. As to this general plan plaintiffs make no complaint and have no right to complain of it. But plaintiffs do claim in their petition, and have proved to the satisfaction of the Court, that the defendants agreed among themselves by unlawful means to destroy, and did destroy, their interstate business, and this, they say, is prohibited by the Anti-Trust Act.

To accomplish this destruction they had a choice of means available to them. They could have boycotted plaintiffs' goods in the hands of their customers. This would have been more difficult, because it probably would have required their enlisting the co-operation of other labor organizations and labor sympathizers in the states where plaintiffs' goods were being sold. It would also have been less effective, because large sections of the public would refuse to respond to their appeals. Or they could have attempted to prevent the transfer companies from hauling plaintiffs' goods to the railroads for shipment. This they were probably not strong enough to do, and besides, such a course would have brought them into more certain conflict with the police. Or they could do as they did do, assault and

abuse those who desired to continue at work, and those who sought employment with plaintiffs, and thereby prevent plaintiffs' factories from operating. This latter was the easiest, safest and most certain method of destroying plaintiffs' business. So defendants adopted this method. It was completely successful. Plaintiffs' business was, for a time, completely paralyzed. Their interstate business ceased. It was only after the injunction was issued that this interstate business was restored, though at first in restricted volume.

That the conspiracy was one to destroy plaintiffs' interstate business, and that the defendants conspired to destroy this interstate business by preventing plaintiffs' factories from operating was established by the evidence and found by the District Court (Tr., pp. 46 to 53). This finding was affirmed by the Circuit Court of Appeals for the Eighth Circuit (Tr., p. 326). With respect to such a situation your Honors, in Washington Securities Co. v. U. S., 234 U. S. 576, said:

> "The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by this Court unless shown to be clearly erroneous."

Believing that the evidence conclusively established the existence of the conspiracy to destroy

plaintiffs' interstate business, charged in the petition, and the unlawful means charged to have been employed to accomplish that purpose, and having in mind that two courts have so found, it will serve no useful purpose to further discuss the facts.

The question, then, presented for decision is this: Is a conspiracy to destroy an established interstate business, by preventing the manufacture of goods which are being sold and shipped in such interstate business, prohibited by the Sherman Act? Section 1 of that act reads:

> "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commence among the several states * * * is hereby declared to be illegal."

With respect to this act this Court, in Eastern States Retail Lumber Dealers Association v. U. S., 234 U. S. 600, 609, said:

> "It (the Sherman Act) broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce."

Prior to this pronouncement, this Court, in Northern Securities Company v. U. S., 193 U. S. 197, 337, had said:

> "In all the prior cases in this court the Anti-Trust Act has been construed as forbidding any

In this way they prevented the building of the proposed railroad, which would have been wholly an intrastate railroad. This Court held that the purchase of the Simpson and Watkins stock and property by the Temple Company, for the purpose of preventing the construction of the railroad, was violative of the Sherman Act and illegal. In the opinion in that case it was said:

> "That under the law of Pennsylvania each of the defendant carrier companies has the power to acquire and hold the stock of coal-producing companies may be true. That the Temple Company may, under the same law, have the power to acquire and hold the capital stock of the Simpson and Watkins collieries may also be conceded. But, if the defendant carriers did, as we have found to be the fact, combine to restrain the freedom of interstate commerce, either in the transportation or **in the sale of anthracite coal in the markets of other states,** and adopted as a means for that purpose the Temple Company, and through it the control of the great Simpson and Watkins collieries, the parts of the general scheme, however lawful, considered alone, become parts of an illegal combination under the federal statute, which it is the duty of the Court to dissolve, irrespective of how the legal title to the shares is held."

In connection with the last quotation it should be emphasized that the stock of Simpson and Watkins

was not a subject of interstate commerce. Its purchase was not part of an interstate commerce transaction. But when its purchase was shown to have been a step in the plan of defendants to restrain interstate commerce, such purchase was declared to be violative of the Sherman Act and illegal.

The deduction to be made from the cases referred to is that the Sherman Act will reach any act, however remote such act (standing alone) may be from interstate commerce, if that act is made an effective part of a combination to restrict such commerce.

The pertinency of these cases is made to appear when the reasoning of the appellants in this case is kept in mind. Their reasoning may be roughly stated thus:

The Sherman Act deals only with interstate commerce.

Manufacture is not interstate commerce.

Therefore, the Sherman Act is not concerned with the stoppage of manufacture.

With equal propriety might the defendants in the Northern Securities Company have reasoned:

The Sherman Act deals only with interstate commerce.

The purchase of share of stock of interstate railroads is not commerce.

Therefore, the Sherman Act has no concern with such purchase.

The futility of such reasoning has been so thoroughly demonstrated that it is now rarely resorted to. The comprehensiveness of the Sherman Act is no longer a question. It has been demonstrated that it will strike down **any** means by which a combination or a conspiracy seeks to restrict interstate commerce, and if stoppage of manufacture is resorted to as a means of destroying or restricting interstate commerce, then such stoppage is prohibited by the Anti-Trust Act.

In Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., 166 Fed. 254, the plaintiff had been engaged in the manufacture of refined sugar which it sold in interstate commerce. It had suspended its business for a time. It made its plans to resume its business. Thereupon the defendant, American Sugar Refining Company, a competitor, conspired with the owner of a majority of its stock to acquire control of the stock and prevent the plaintiff from resuming its former business. The Circuit Court of Appeals for the Second Circuit held that the conspiracy to prevent the Pennsylvania Company from resuming the manufacture of refined sugar practically restrained interstate commerce and was violative of the Anti-Trust Act.

In the case of American Column and Lumber Co. v. U. S., 257 U. S. 377, the plan was adjudged an illegal combination in restraint of trade. The finding of the

District Court was affirmed in this court, and one of the grounds for the affirmance upon which special emphasis was laid was the finding that the association of which appellants were members had conspired **to curtail production.** Production is but another name for manufacture. By curtailing production, the defendants reduced the supply and increased the price. Production was but one step in the interstate business of the lumber companies involved. Production alone was not interstate commerce. But, because curtailment of production decreased the volume of interstate commerce in lumber and increased the price of lumber shipped in interstate commerce, a conspiracy to curtail production was held to be violative of the Sherman Act. In the opinion, the Court said:

> "Convinced, as we are, that the purpose and effect of the activities of the 'open competition plan' here under discussion were to restrict competition and thereby restrain interstate commerce in the manufacture and sale of hardwood lumber **by concerted action in curtailing production** and in increasing prices, we agree with the District Court that it constituted a combination and conspiracy in restraint of interstate commerce within the meaning of the Anti-Trust Act of 1890 (26 Stat. 209), and the decree of that Court must be affirmed."

The application of the Sherman Act to labor conspiracies is of long standing. Even prior to the case of Loewe v. Lawlor, 208 U. S. 274, that act had been invoked to restrain or punish those who conspired to restrain interstate commerce as a means of advancing the interests of employes engaged in a contest with employers. See

U. S. v. Workingmen's Council, 54 Fed. 994;
U. S. v. Elliott, 62 Fed. 801;
Thomas v. Railway, 62 Fed. 803;
U. S. v. Debs, 64 Fed. 724.

In Loewe v. Lawlor the evidence showed that the plaintiffs were manufacturers of hats in Danbury, Connecticut; that they enjoyed an interstate trade in some twenty states other than the State of Connecticut; that they were practically dependent upon this interstate trade. That at the time the conspiracy complained of was formed "they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in states other than Connecticut, and that if prevented from carrying on the work of manufacturing these hats, they would be unable to complete their engagements." From a footnote to the opinion it appears that plaintiffs claimed that the number of their employes was more than 230, and that the annual output of their

factory amounted to over $400,000.00 per year. The labor unions, failing in an attempt to unionize the plaintiffs' factory, instituted a boycott against plaintiffs' hats in other states and against dealers in other states who might purchase from plaintiffs.

Now, if appellants in this case had been defendants in the case of Loewe v. Lawlor, they would have argued, no doubt, that hats manufactured in Connecticut and sold and delivered to dealers in other states had ended their interstate transportation, and were no longer a part of interstate commerce, and that to boycott such hats after they had ceased to be a part of interstate commerce, and to boycott dealers in such hats who were not seeking to sell them in interstate commerce, could not constitute an interference with interstate commerce. If such an argument were made, it would have been answered by the following declaration of this Court:

> "The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other states, and that, for the direct purpose of destroying such interstate traffic, defendants combined, not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the state, but also to prevent the vendees from reselling the hats which they had imported from Connecticut or from further negotiating with plaintiffs for the purchase and interstate transportation of such

hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a state, and some of them were, in themselves, as a part of their obvious purpose and effect, beyond the scope of federal authority, still, as we have seen, the case must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If **the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced, and, at the other end, after the physical transportation ended, was immaterial.**"

We have set out a part of the foregoing quotation in bold-face type to emphasize it, because of its bearing upon the case in hand.

In the Danbury Hatters case the boycott was directed at the manufacturers' goods after transportation had ended and the hats had lost their status as a part of interstate commerce. They were boycotted as a means of destroying the interstate business of the manufacturers. In the instant case the prevention of manufacture of plaintiffs' trunks and leather goods was adopted as a means of destroying the interstate business of these plaintiffs. In the Danbury Hatters case the means employed operated at one end, after transportation ceased, and in this

case they operated at the other end, before transportation commenced. The purpose in each case was identical. The purpose of the defendants in the Danbury Hatters case was to destroy the interstate commerce of the manufacturers. The purpose of the defendants in this case was to destroy the interstate commerce of these plaintiffs. In both cases the ultimate object was the same, i. e., the unionization of the factories of the manufacturers. This Court points out that in both cases the Sherman Act is violated.

Another case which illustrates the same principle and points to the same application of the Sherman Act is that of Duplex Printing Press Co. v. Deering, 254 U. S. 443. In that case the unions there sued were charged with a conspiracy to boycott the products of the plaintiffs' factory, to injure and destroy plaintiffs' good will, trade and business, and especially to obstruct and destroy its interstate trade. The specific acts complained of, as disclosed in the opinion of this Court, were:

> "Warning customers that it would be better for them not to purchase, or, having purchased, not to install presses made by complainants, and threatening them with loss should they do so; threatening customers with sympathetic strikes in other trades; notifying a trucking company, usually employed by customers to haul the presses, not to do so, and threatening it with trouble if it should; inciting employes of the

trucking company and other men employed by customers of complainant to strike against their respective employers, in order to interfere with the hauling and installation of presses, and thus bring pressure to bear upon the customers; notifying repair shops not to do repair work on Duplex presses; coercing union men by threatening them with loss of union cards and with being blacklisted as 'scabs' if they assisted in installing the presses; threatening an exposition company with a strike if it permitted complainant's presses to be exhibited, and resorting to a variety of other modes of preventing the sale of presses of complainant's manufacture in and about New York City and delivery of them in interstate commerce, such as injuring and threatening to injure plaintiff's customers and prospective customers and persons concerned in hauling, handling or installing the presses."

From this statement it appears that the conspiracy first began to operate after the presses had been shipped from Michigan and delivered in New York City. Of these acts the Court said:

"The acts complained of and sought to be restrained have nothing to do with the conduct or management of the factory in Michigan, but solely with the installation and operation of the presses by complainant's customers."

From which it would appear that the defendants adopted means substantially similar to those adopted

by the defendants in Loewe v. Lawlor. That is, they boycotted plaintiff's presses after they had been delivered in New York City and had ceased to be a part of interstate commerce, and they boycotted those who had purchased such presses, all for the purpose of destroying the plaintiff's interstate business. In the course of the opinion this Court said:

> "In Loewe v. Lawlor, 208 U. S. 274, 48 L. Ed. 488, 28 Sup. Ct. Rep. 301, 13 Anno. Cas. 815, where there was an effort to compel plaintiffs to unionize their factory **by preventing them from manufacturing articles intended for transportation beyond the state**, and also by preventing vendees from reselling articles purchased from plaintiffs and negotiating with plaintiffs for further purchases, by means of a boycott of plaintiffs' products and of dealers who handled them, this Court held that there was a conspiracy in restraint of trade, actionable under Section 7 of the Sherman Act, and in that connection said (p. 293): 'The act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the states or restricts, in that regard, the liberty of a trader to engage in business. The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes.' And when the case came before the Court a second time (235 U. S. 522, 534, 59 L. Ed. 341, 348, 35 Sup. Ct. Rep. 170), it was

held that the use of the primary and secondary boycott and the circulation of a list of 'unfair dealers' intended to influence customers of plaintiffs and thus subdue the latter to the demands of the defendants, and having the effect of interfering with plaintiffs' interstate trade, was actionable."

Thus, in the Duplex case, we find a reaffirmation of the rule that **any** combination to interfere with interstate commerce, and which in its execution directly affects such commerce, is violative of the Sherman Act. We also have a reaffirmation of the rule that it is immaterial whether the means used to prevent interstate transportation "operated at one end, before physical transportation commenced," or "at the other end, after physical transportation ended."

The only questions are:

Did the defendants conspire to destroy an established interstate commerce?

And

Did the means employed have a direct effect upon such commerce?

In Stafford v. Wallace, 42 Sup. Ct. Rep. 397, this Court had before it the constitutionality of the Packers and Stockyards Act of 1921. This act sought to regulate the conduct, and particularly the prices, prevailing at stockyards at which live stock were han-

dled. It was claimed that Congress had no power to regulate stockyards, because of the fact that the yards themselves and the transactions taking place at the yards were wholly intrastate. This Court held that, while the stockyards themselves and the purchase and sale of cattle thereat were wholly intrastate, taken alone, that nevertheless this intrastate property and intrastate acts were so related to interstate commerce as to bring them within the regulatory powers of Congress. In reaching its conclusion this Court reviewed numerous opinions of the Court in which the Sherman Act had been held to apply to transactions which, standing alone, were not a part of interstate commerce, but which were found to be so intimately related to interstate commerce as to bring them within the control of the Antitrust Act. In its opinion the Court said:

> "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are ever flowing, are in their very essence the commerce among the states and with foreign nations, which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This Court declined to defeat this purpose in respect of such a stream and take it out of com-

plete national regulation by a nice and technical inquiry into the noninterstate character of some of its necessary incidents and facilities, when considered alone and without reference to their association with the movement of which they were an essential but subordinate part."

The Court in the Stafford case quotes from U. S. v. Ferger, 250 U. S. 199, wherein the Court had under consideration an act of Congress providing punishment for forgery and utterance of bills of lading for fictitious shipments in interstate commerce. It had been contended in that case that there could be no commerce in fraudulent and fictitious bills of lading, and from this it was argued that Congress had no power over such acts. This contention was answered in that case by this Court as follows:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the purposes are sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 150 U. S. 564), and with a host of other acts which, because of their relation to and influence upon interstate

commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

Another case that illustrates the application of the same principles is that of Lamar v. U. S., 260 Fed. 561. The opinion in that case was rendered by the Circuit Court of Appeals for the Second Circuit. Certiorari to this Court was applied for and denied (250 U. S. 673). In that case defendants had been charged and convicted of a violation of the Sherman Act, the specific complaint being that they conspired to restrain freight trade and commerce in munitions; that is, to stop manufacture, transportation and distribution thereof by instigating strikes on the part of employes concerned in such manufacture and distribution. The conviction of the defendants was sustained by the Circuit Court of Appeals, and its act in doing so was inferentially approved by this Court by the denial of certiorari. The analogy of that case to this is apparent. There the defendants sought to stop manufacture and distribution by instigating strikes. Here the defendants sought to do the same thing by instigating and conducting a strike. In that case they failed to accomplish their purpose. It was not shown that they had succeeded. In this case the defendants were successful for a time. If a conspiracy to instigate strikes in manufacturing plants is, as was decided in the Lamar case,

a violation of the Sherman Anti-Trust Act, even though no interference with interstate commerce actually results, certainly a conspiracy to stop manufacture, by means of a strike and attendant violence, as was the situation in this case, resulting in the actual stoppage of a vast interstate business, was likewise a violation of the Sherman Act which the District Court had power to restrain. In the Lamar case the Court of Appeals used this significant language:

> "It does not militate against this conclusion to urge (as has been done) that the object of the statute of July 2, 1890, was not to prevent agitation against a trade believed by defendants to be both impolitic and immoral, or to assert (what is true) that defendants failed in effecting any hindrance of trade, or (what we may assume as true) that no one of the defendants had any suspicion that the Sherman Act stood in the way of either forming or performing their scheme for stopping war in Europe through lack of supplies, and keeping the United States out of war by inability to make or deal in the means thereof."

The case upon which appellants place most reliance is the Coronado Coal Company case. In that case this Court said:

> "Coal mining is not interstate commerce. The obstruction of coal mining, though it may pre-

vent coal from going into interstate commerce, is not a restraint of that commerce, **unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred.**"

Judge Sanborn, sitting for the Court of Appeals in the instant case, points out that:

> "The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce."

To this, Judge Sanborn adds:

> "So, while manufacture is not interstate commerce, its relation to interstate commerce is governed by the same rule. If the obstruction to it is intended directly to restrain interstate commerce or if such obstruction has such a direct, material and substantial effect to restrain it that the intent so to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the Federal Court under the Anti-Trust Act."

In distinguishing the Coronado case from the instant case and from cases like Loewe v. Lawlor and

the Duplex Printing Press case, Judge Sanborn, in the opinion referred to, says:

> "While the law governing cases of this class is the same in all cases, the conspiracies alleged, the evidence to sustain them and the results in the various cases necessarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States and to prevent any interstate trade or commerce in the coal produced from nonunion mines. Thus the Court said: 'The plaintiffs charge that there has been and is a continuously operating conspiracy between union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it,' and it held that the plaintiffs were not entitled to recover against District No. 21, because 'In a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in District No. 21 of 150,000 tons a week, 5,000 tons a week which the Bache-Denman mines in most prosperous time could not exceed, would have no appreciable effect upon the price of coal or nonunion competition' (42 Sup. Ct. Rep. 570, 582, 584), and the Court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation."

From the foregoing and from an examination of the opinion of this Court in the Coronado case, it would appear that the conspiracy complained of in the Coronado case was one between the union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it. This Court concluded that the conspiracy thus described was not established by proof that the defendants combined and used violent means to prevent nonunion men from working in the Bache-Denman mines. As pointed out by Judge Sanborn, the conspiracy alleged and proved in the instant case is entirely different from that involved in the Coronado case. Referring to this case Judge Sanborn said:

> "In the case before this Court now, the gravamen of the complaint is not that the defendants attempted to monopolize all interstate commerce, but that the defendants conspired and were executing that conspiracy by unlawful means to prevent, if possible, and to restrain as far as possible, the flow of the plaintiffs' existing continuous current of interstate commerce and the performance of the interstate commerce contracts which they had made to sell, make and deliver the articles, which were the subject of that commerce to customers in states other than Missouri."

Another case upon which the appellants place reliance is that of Hammer v. Dagenhart, known as

the Child Labor case. The act of Congress involved in that case prohibited the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of fourteen had been employed or permitted to work, or children between the ages of fourteen and sixteen had been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of 7 o'clock p. m. or before the hour of 6 o'clock a. m. The Court in its opinion in that case points out that the purpose of the act was to standardize the ages at which children might be employed in mining and manufacturing within the state. From this it follows that the purpose of the act was not to regulate commerce, but to regulate employment. The Court points out that the goods shipped were, of themselves, harmless; that the act permitted them to be freely shipped after thirty days from the time of their removal from the factory. These facts indicated conclusively that the restrictions placed on the manufacture of the goods had absolutely no effect upon the goods themselves or upon the commerce into which they flowed, and that the sole purpose of the act was to regulate the employment of children within the state. This, the Court held, Congress had no right to do. If the employment of children could have been said to have

an objectionable effect upon the goods manufactured by them, intended for shipment in interstate commerce, undoubtedly the Supreme Court would have adjudged the act of Congress valid. For instance, the Pure Food and Drug Act has been held a valid exercise by Congress of its power to regulate interstate commerce—this because, interstate commerce is affected by the adulteration of food and drugs which enter that commerce. But, because child labor had no relationship to commerce, and the goods manufactured by child labor were in no manner affected by their production, and as Congress was not, in fact, attempting to regulate commerce, but only to regulate the employment of children, this Court held the act unconstitutional. The distinction between the Food and Drug Act and the Child Labor Act makes it apparent that Congress can regulate anything that affects interstate commerce, but beyond that it cannot go.

In the present case, as pointed out by the opinion of the Circuit Court of Appeals for the Eighth Circuit, plaintiffs were possessed of an established interstate business; it amounted to more than $2,500,000.00 annually; it embraced all of the business in that particular line emanating from a great commercial center—the City of St. Louis; two courts have found that the defendants conspired to destroy this interstate business. For a time, and until the injunction

was issued, they succeeded in completely destroying this interstate business. They destroyed it by preventing the manufacture of goods which were to supply interstate orders and to sustain the currents of interstate business which the plaintiffs enjoyed. Their direct object was the destruction of this business, for only by its destruction could the injury be inflicted on plaintiffs which would compel them to yield to the demands of the defendants to unionize their plants. The restraint imposed was not negligible; it was complete as to all the commerce flowing from St. Louis in this particular line. It was not an indirect and incidental restraint on interstate commerce. The conspiracy charged was one to destroy this interstate business. The destruction of this business was the direct object of the conspiracy. Both the District Court and the Court of Appeals have found that such was its object. Such being its object, it cannot be said that the restraint was incidental. In this situation the District Court and the Circuit Court of Appeals for this circuit found that the conspiracy was violative of the Sherman Act. While "manufacture is not interstate commerce," a stoppage of manufacture was in this case undoubtedly a means, and intended as a means, for destroying plaintiffs' interstate commerce. The stoppage of plaintiffs' interstate commerce by the means

employed in this case was just as effectively a restraint upon interstate commerce, and just as violative of the Sherman Act, as would be the act of plaintiffs' competitors in Chicago, for instance, should they, for the purpose of destroying competition, purchase the stock of the plaintiff companies and by their control, thus secured, stop the manufacture of all goods in plaintiffs' factories. In the case just supposed, the conspirators would not have physically interfered with any interstate movement of goods; they would have merely stopped their manufacture. They would have destroyed the plaintiffs' business by stopping it at its source, and this for their personal advantage. So, in the present case, the defendants, for their personal advantage, conspired to, and did destroy the plaintiffs' business for the time being, by stopping the manufacture of their goods intended to supply their interstate business. The two cases would be identical in principle. Both would be violative of the Sherman Act.

Upon the foregoing considerations and those advanced in the opinion of the Circuit Court of Appeals, we respectfully ask that the judgment of the Court of Appeals be affirmed.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

FEB 29 1924
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

United Leather Workers International Union, Local Lodge or Union No. 66; A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Warsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, George Wenk and Benjamin Schnitz, Appellants,

v.

Herkert & Meisel Trunk Company, a Corporation; P. C. Murphy Trunk Company, a Corporation; James A. Quirk Trunk Company, a Corporation; Stability Leather Goods Manufacturing Company, a Corporation, and H. A. Kolb Trunk and Case Company, a Corporation, Appellees.

No. 878. 233

APPELLEES' SUPPLEMENTAL MEMORANDUM.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

United Leather Workers International Union, Local Lodge or Union No. 66; A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Warsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger, George Wenk and Benjamin Schnitz, Appellants,

v.

Herkert & Meisel Trunk Company, a Corporation; P. C. Murphy Trunk Company, a Corporation; James A. Quirk Trunk Company, a Corporation; Stability Leather Goods Manufacturing Company, a Corporation, and H. A. Kolb Trunk and Case Company, a Corporation, Appellees.

No. 878.

APPELLEES' SUPPLEMENTAL MEMORANDUM.

Appellants have printed in their record the opinion of Judge Faris, the District Judge before whom the case was tried. In this opinion Judge Faris ex-

pressed certain personal views upon the jurisdictional question which were at variance with the decisions of the Circuit Court of Appeals for the Eighth Circuit, and which he felt he had to disregard because of the controlling authority of the Court of Appeals.

Subsequently Judge Faris had before him another case involving the same question, the case being Con P. Curran Printing Company v. Allied Printing Council. In the case just mentioned he rendered an opinion which we desire to call to the Court's attention, because it shows that upon this vital question of jurisdiction Judge Faris has changed his views, so that they are now in accord with those of the Court of Appeals in the instant case.

For the benefit of the Court we print herewith his opinion in full.

CHARLES A. HOUTS,
MAT J. HOLLAND,
WALTER GORDON MERRITT,
Attorneys for Appellees.

District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Con P. Curran Printing Company, a Corporation,
Plaintiff,
vs.
Allied Printing Council et al.,
Defendants.
In Equity. No. 5759.

Faris, J.

Oral Opinion of the Court.

An application was made to the Court some months ago for a preliminary injunction in this case. It is a case bottomed upon the provisions of the Sherman Act, brought by an employer against certain local labor unions; against certain individuals as such, and as officers of the defendant labor unions.

Upon the hearing of the case much evidence was taken on both sides, not only upon what I may call the merits of the case; that is, upon the question whether the defendants had committed various unlawful and unpeaceful acts, but also upon the question of jurisdiction, which was, perhaps, the most strongly contested point, or issue, in the case.

Considerable delay has occurred in this case, the blame for which the Court thinks it ought to cast upon counsel, for it has been due to the fact that counsel were slow in furnishing the Court briefs with regard to their several positions. The last of these briefs was furnished on last Saturday, the third of this month.

As forecast, defendants contended upon the hearing on the application for a temporary injunction, and still contend, that this Court has no jurisdiction to grant a temporary injunction, for the reason that the facts proven do not serve to take the case out of the rule announced by the Supreme Court of the United States in the case of United Mine Workers of America v. Coronado Coal Company, 259 U. S. ..., nor serve to bring it within the rule of the case of United Leather Workers etc. v. Herkert & Meisel Trunk Company, 284 Fed. 446. As I understand the attitude of counsel for the defendants, no very strenuous contention is made that the facts adduced upon what I have seen fit to call the "merits" are not sufficient, if this Court has jurisdiction, to permit the granting of the temporary injunction prayed for. I think no question can fairly be raised touching that. The proof of unpeaceful and unlawful acts is such, as the record discloses these things, that no one would, I think, have the temerity to insist that, if this Court has jurisdiction, an injunction ought not to be granted. So, I shall not go into that question, but shall assume, as I think the record clearly warrants me in assuming, that if this case is in a court which has jurisdiction to grant an injunction, then a temporary injunction ought, without any doubt, to be granted here.

But, since there is no diversity of citizenship, and since this Court can take jurisdiction only in the event that the facts adduced bring it within the purview of the Sherman Act; and since, I have already stated, it is strenuously urged that such facts do not make the case thus to fall, it is urged that there is no jurisdiction here.

I may say in passing that I put no stress upon the fact that some of the printing in hand was of blanks and forms for use by interstate common carriers in transacting business with the Interstate Commerce Commission. As to such work, I see no reason why the rule applied in the case of Hammer v. Degenhart, 247 U. S. 251, and the case of In re Green, 52 Fed. 113, should not apply, since, under the rule announced in the two cases above cited, neither the intent nor the ultimate destination, but the actual fact of the commencement of interstate movement, is the test of whether an article manufactured in a state is in course of interstate carriage so as to entitle it to protection under the commerce clause of the Federal Constitution.

There is, of course, some incidental stress to be placed upon the fact that I have just, in effect, mentioned. That stress arises, not from the peculiar destination of these forms and blanks, but from the fact that they formed, or were intended to form, a part, when manufactured, of commerce between the states. I may not have made the distinction clear, but it is clear in my mind, and it may become clearer from what I shall subsequently say about it.

Not the above question, then, but the question of whether the strike of defendants was entirely local, as in the case of United Mine Workers of America v. Coronado Coal Company, supra, or whether it was so far nation-wide as that from it a conspiracy, whose effect was appreciable in determining and reducing the flow of commodities in commerce between the states, can be fairly and reasonably deduced, is the question to be resolved upon the facts in the record before me.

As stated, the record is very voluminous in this case. I shall not attempt to mention but a few of the things which it contains, and those few will pertain wholly to facts bearing upon the question of jurisdiction under the Sherman Act.

For a time prior to May 1, 1921, a contract had been in effect between plaintiff and the various printing unions which are defendants here, whereby plaintiff mantained what is called a "closed shop." Plaintiff, upon the expiration of this contract, refused to continue its business as a closed shop, or to acquiesce with the insistence of the defendant unions, that it put in force and maintain a 44-hour week, which regulation touching the 44-hour week was, perforce certain resolutions of the International Typographical Union, a necessary incident of a closed shop.

Upon these two questions, principally, negotiations broke up, and this strike followed. One side contends that it was a strike, the other side insists that it was a lockout. Terminology cuts no figure in the law of the case. Whether a strike or a lockout ensued makes no difference in the case. The ultimate facts are that the defendant unions insisted on an open shop and a 44-hour week. Plaintiff refused to consent to these two conditions, and thereupon the component members of defendant unions, under the order of the respective unions, and pursuant, I think, to authority and resolutions of the International Typographical Union, quit work and began to picket the plant of plaintiff in an unpeaceful and unlawful way.

The defendant, Allied Printing Council, seems to be composed of representatives of the several local unions. These local unions are affiliated with the

International Typographical Union, which, as its name tends to indicate, has jurisdiction over the workers in the printing trades, not only in the United States, but in Canada as well. In short, the local unions, as, for example, defendant, St. Louis Typographical Union No. 8, Printing Pressmen's Union No. 6, as well as the other local unions named as defendants here, while locally independent, except in so far as they operate together through the local Allied Printing Council, are yet all allied with the International Typographical Union, either directly, or through agreements with the several international unions with which the local Pressmen's Union, Bookbinders' Union and other unions herein made defendants are affiliated.

No necessity exists at this time to trace, or attempt to trace, accurately, the manner or means of this affiliation, or its varied ramifications, so I do not attempt it in this brief statement. I do not consider that it makes very much difference as to whether these affiliations and ramifications are accurately stated here or not, so I have not attempted, and shall not attempt, to follow them very closely.

Before the differences which brought about this controversy arose, the International Typographical Union had declared in favor of the 44-hour week, and was making efforts to compel the nation-wide adoption thereof by all employers of labor in the printing trade.

The Book of Laws of the International Typographical Union, among other things, provides in section 159 that:

> "It is imperatively ordered that no strike or lockout shall be deemed legal, or moneys ex-

pended from the defense fund on that account, unless the strike or lockout shall have been authorized or recognized by the Executive Council; but should a strike, lockout or reduction of wages be forced on a union without an opportunity to carry out the provisions of sections 153 and 154, said union shall be entitled to the full privileges of the defense fund."

Section 153 of the Book of Laws of the International Typographical Union, above referred to, provides in substance that no strike shall be called until the president of the International Typographical Union, either in person or by proxy, shall go to the home of the local union and endeavor to adjust the differences. If such effort to adjust shall fail, the president shall advise the Executive Council of the International Typographical Union, and, if the Executive Council thereupon shall decide in favor of the strike, the local union shall be authorized to call a strike. When a strike has thus been called, the Executive Council is authorized to pay the officers of the local striking union certain strike benefits, which are set out in Section 162 of the International Typographical Union Book of Laws.

It will be observed, then, from this, that under the ironbound rules of the International Typographical Union, with which the defendant unions are affiliated, no lawful strike is possible, and no lawful benefits are payable by the International Typographical Union to the several local unions unless, as a condition precedent, the strike wherein such benefits are paid has been authorized theretofore by the affirmative action of the International Typographical Union, through its Executive Council.

It follows, then, of course, that if this strike is legal, its legality must be determined upon the question of whether it has been so far recognized by the International Typographical Union as that the latter has paid from its treasury moneys with which to carry the strike on, and moneys which have been applied to the payment of benefits, and to the payment of pickets, and other officers or members of the local unions; if such payments have been made, clearly, in the light of the quotation made from the Book of Laws of the International Typographical Union, then the strike has been recognized, and is being aided and abetted by the International Typographical Union.

Pursuant to the above provision (it is to be assumed) the International Typographical Union advanced, up to December, 1921, for "benefits and special assistance" to the St. Louis unions, on account of this strike, $22,936.00, as also a further sum designated as a "loán," of $20,000.00. Up to May, 1922, the International Typographical Union had advanced money, designated on its official reports a "loan" to fendant, St. Louis Typographical Union No. 8, in the sum of $46,685.69. During the year 1922, and for a portion of the year 1921, and prior to the hearing of this case, there were, as is shown by the reports of the International Typographical Union, then pending some two hundred and twenty strikes among the allied printing trades unions in various places and cities of the United States and Canada, which were being waged in order to obtain the 44-hour week, or to prevent the open shop. These strikes involved practically all the states in the Union. A 10 per cent

strike assessment was being levied and collected by the International Typographical Union, and assistance and strike benefits were being furnished to approximately eight thousand striking members of the crafts and unions affiliated with the International Typographical Union. The whole number of these strikes were being fostered, aided and abetted during all of this time by the International Typographical Union; and moneys, where necessary, were being furnished by the latter to carry on to a successful issue all of these two hundred and twenty strikes. Seemingly, vast sums of money were being gathered and spent for this purpose by the International Typographical Union. For the year ending May, 1922, there had been expended, seemingly, for this purpose, the sum of $8,863,000.00 by the International Typographical Union. I say "seemingly," because upon this point the object of the payment, or expenditure, of this vast sum does not clearly appear from the official publications. I assume, however, that beyond mere incidental expenses there could be no other use for this money, and it is set down in the official reports of the International Typographical Union as "expenditures," all of which, I think, goes to show that the strike of defendant unions was not a local nor isolated instance, but that the movement was nation-wide, and was aided, assisted and abetted by the International Typographical Union, which had acted in bringing it about, as its Book of Laws provided.

Without further comment, and in the light of even these brief facts, it is not possible that the strike here in controversy was local in the sense and way pointed out in the Coronado case, supra. These brief facts,

taken from others of a similar and equally cogent sort, conclusively show that there was brought about by these defendants, and the International Typographical Union acting for them, and in concert with them in this strike, an appreciable interference with interstate commerce.

One phase of the facts which constitutes interference with interstate commerce in such wise and degree as will justify interference by a federal court, under the Sherman Law, is set forth in the late case of the United Leather Workers etc. v. Herkert & Meisel Trunk Company, 284 Fed., l. c. 152, and while I have found myself unable to concur in a thoroughgoing and complete way with all that was said by the Court of Appeals in the above case, it is, of course, binding on me while it is the law, and unless and until it has been reversed by some court superior in authority. However, I think I may say that, generally, I concur in the quotation that I am now about to read:

> "It is contended that because manufacture is not commerce, and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other states, and the prevention of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the con-

> tinuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts, or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate commerce, neither is buying or selling or contracting to buy or sell the goods, or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps, which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court."

I think, regardless of the views which I personally expressed in a memorandum filed in the case, from which I have read when the case was decided here, that I may agree with what I have quoted, so far as it goes. I, perhaps, might go a little farther, in this: That I think the Court ought to consider whether the conspiracy which brought about the state of facts stated in the excerpt does, or does not, reach beyond the borders of a given state. If it shall be found that it does so reach; that others in other states (in practically

all of the states of the American Union, and in a part of Canada, as here) were assisting, aiding and abetting; in other words, were conspiring, to stop the flow of commerce in things printed, throughout the whole Union, then such acts constitute an appreciable interference with interstate commerce that ought to be stopped by a federal court.

Therefore, the finding of the Court upon the question of jurisdiction (which, as forecast, I deem the only debatable question presented by the record) should be for plaintiff and against the defendants.

The motion and application for a temporary injunction should be sustained as to all defendants, who have either been served with process, or who have appeared and answered the rule to show cause. A decree may be submitted accordingly.

I think I should fix the bond at ten thousand dollars, to be approved by the Court simultaneously with the signing of the order granting the temporary injunction.

St. Louis, Missouri.
March 7, 1923.

FEB 28 1924
WM. R. STANSBU
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al.,
Appellants,
vs.
HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Appellees.

No. [redacted]233

APPELLANTS' REPLY BRIEF.

JOHN P. LEAHY,
Solicitor and Counsel for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66; A. M. REUTER, AL BIRKENMEIER, H. EHLENBECK, CHARLES KAYSING, JOHN SMITH, MICHAEL LITTLE, JOHN LECHNER, CHARLES MORGAN, PAUL BERRY, EDWARD SCHILLING, AMBROSE KINTZ, STEPHEN WILHELM, WALTER DECHANT, ESTHER BRADLEY, NORA WIELAND, MALLEY COLLEY, WALTER FLEHER, THOMAS HALLIBURTON, J. PERRY, JOHN REMSTEDT, CHARLES REUBEN, HENRY SCHNITZ, THEO SUMMERS, CHARLES TADESCO, FRED TENTSCHERT, RAY WATKE, WALTER WEBBER, JOHN ZIMMERMAN, HERMAN DIECKHORNER, JOE KUHN, WM. BALMER, ROBT. GINNER, TOM CAITO, FRANK CATO, RUDOLPH KOOB, ANTON PAULEY, LEO PAULEY, ROBERT WARSING, STEVE ZOELLER, TONY SANSON, ANNIE STECKER, SYLVESTER SCHNITZ, GUS NENNINGER, GEORGE WENK and BENJAMIN SCHNITZ,

Appellants,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, P. C. MURPHY TRUNK COMPANY, a Corporation, JAMES A. QUIRK TRUNK COMPANY, a Corporation, STABILITY LEATHER GOODS MANUFACTURING COMPANY, a Corporation, and H. A. KOLB TRUNK AND CASE COMPANY, a Corporation,

Appellees.

NO. 878.

APPELLANTS' REPLY BRIEF.

In the statement contained in the brief filed by the appellees the following appears (Appellees' Br., p. 4):

"The facts to which your Honors' attention will be called are limited to those disclosed in

> the opinion of the District Court and that of the Circuit Court of Appeals for the Eighth Circuit."

The attempt to combine both these findings in the statement of the appellees, which so far from being identical essentially differ in important particulars, appears to have resulted (inadvertently no doubt) in the appellees attributing to both courts the following findings (Appellees' Br., p. 6):

> "It was the purpose and intent of the defendants to prevent, if possible, and if not, to restrict, plaintiffs' interstate commerce, and thereby cause plaintiffs loss of income and injury and force plaintiffs to accede to the demands of the defendants."

Now the District Court found that there was a conspiracy upon the part of the defendants to establish a "closed shop," i. e., to unionize the plaintiffs' plants, but it did not find that such conspiracy was directly intended to interfere with or to obstruct the plaintiffs' interstate shipments. An examination of the opinion of the learned Judge of the District Court in this case (which will be found in Appendix A, page 121, of the original brief filed by the appellants, and at page 46 of the transcript of the record) will very clearly indicate this.

The District Court found that the articles which the plaintiffs were manufacturing had not come into

existence at the time of the strike, and the only interference on the part of the defendants was with their manufacture, and after citing the case of In re Green, 52 Fed., l. c. 113; Hammer v. Degenhart, 247 U. S., l. c. 272; Coe v. Errol, 116 U. S. 517 (see page 126 in appellants' original brief and page 49 of the transcript of the record), that Court said:

> "The above well-known and well settled definition, touching when articles made in one state and intended for sale in another, begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Antitrust Law. **If the matter were one of first impression in this circuit I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Antitrust Act, supra.** But the matter is not one of first impression in this circuit. Therefore, **it is my duty, regardless of any personal views or convictions which I may hold upon the subject,** to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit."

And again the learned District Judge, after citing the opinion of the Circuit Court of Appeals of the

Eighth Circuit in the case of Dowd v. United Mine Workers of America, 258 Fed. Rep. 829, and that the appellate court in the Dowd case, supra, notwithstanding that the coal, or much of it in that case, intended for interstate commerce had not been mined and was not in existence as a commodity of any sort of commerce or transportation, but because the mining of same was prevented by the acts of the defendants, held that the plaintiffs were by reason of these facts engaged in interstate commerce, applied that ruling—although opposed to his own opinion—to the facts in the instant case, and also emphasized his personal view of the opinion in the Dowd case and the Coronado Coal Company case, 258 Fed. Rep. 829, in the following language (see page 230 of appellants' original brief and page 52 of transcript of record):

> "**I am constrained, regardless of my own views,** to hold that the plaintiffs here were engaged in interstate commerce, and that the acts of defendants operated as restraints upon that commerce within the purview of the first section of the Sherman Antitrust Act."

The appellees in their argument assert (Appellees' Br., p. 8) that:

> "The pleading and proof disclose a quite common succession of events in labor disputes.
>
> "First. The defendants formed the purpose of

completely unionizing the factories of the plaintiffs.

"Second. They attempted to accomplish this purpose by negotiations with plaintiffs. In this they failed.

"Third. They conspired together to destroy the business of plaintiffs until such time as plaintiffs would consent to the unionization of their factories."

They concede that the first, i. e., the purpose to unionize the plaintiffs' plants was a lawful one, and that the second, to accomplish this purpose by negotiations with plaintiffs, was also a lawful one, but that the third, i. e., that defendants conspired together to destroy the business of the plaintiffs until such time as the plaintiffs would consent to the unionization of their factories is complained of by them as violative of the Sherman Anti-Trust Act, and they emphasized their view of the theory of their case in the following language:

"It is essential that the precise objects of the conspiracy complained of be kept in mind. This is so because, **unless the conspiracy and the acts done in pursuance of it, have a DIRECT RELATION to interstate commerce, the District Court had no jurisdiction of the suit**" (Appellees' Br., p 9).

Now, upon the theory of the appellees as clearly indicated in their bill of complaint and in the evi-

dence by which they sought to establish the allegations of same, the precise object of the conspiracy alleged to exist upon the part of the defendants was

"to unionize the factories of the plaintiffs,"

and this purpose of the defendants—of the existence of which there was not one scintilla of evidence in the entire case—is now admitted by the appellees to have been a lawful one, **for such purpose or object had no direct relation to interstate commerce.** And even if there was an unlawful interference with the production of the plaintiffs' goods in their factories on the part of the defendants and a consequent inability of the plaintiffs to fill the interstate orders which they had received and ship their manufactured products in interstate commerce, such interference was not the direct object of the conspiracy and had no direct relation to interstate commerce, but was merely incidental to the same and therefore not within the scope of the Sherman Anti-Trust Act, for that act condemns only these combinations or conspiracies that are formed to restrain trade and commerce amongst the several states, and such a conspiracy was neither pleaded or proved in the instant case.

The weakness of the plaintiffs' case is practically admitted by the able counsel for appellees in their adroit attempt to eliminate the positive averments in

their bill of complaint that the objects of the conspiracy alleged to exist upon the part of the defendants was to unionize the business of the plaintiffs unless the demands of the defendants were granted, namely, to establish union shops, and which was the basis of their case as submitted to the trial court, and they now attempt to describe these positive and essential averments as

> "mere recitals of a situation which existed prior to the time the unlawful conspiracy was formed, but as antedating the conspiracy."

We make no objection to the appellees negativing the positive allegations of their bill, and, indeed, upon which that bill was based, but we do object to their attempt to inject into their pleadings the allegations of a conspiracy to interfere with the plaintiffs' interstate commerce which was neither pleaded nor proved.

We shall now discuss, briefly, the cases relied upon by the appellees and mentioned in their brief.

WASHINGTON SECURITIES COMPANY v. UNITED STATES, 234 U. S. 576.

We concede that the rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by this Court unless shown to be clearly erroneous, but we submit that this rule has no appli-

cation to the instant case, because there was no concurrence of the two lower courts in the findings of facts and because we are dealing in this case with conclusions of law as applied to the facts. Moreover, these findings as to the existence of the conspiracy are, as we submit, clearly erroneous.

EASTERN STATES RETAIL LUMBER DEALERS ASSOCIATION v. UNITED STATES, 234 U. S. 600, 609.

In the above case the defendant was a combination of various lumber dealers in different states, which combination was charged with having entered into a conspiracy to unduly restrain competition. The question of jurisdiction was neither involved nor considered there.

NORTHERN SECURITIES COMPANY v. UNITED STATES, 193 U. S. 197, 337.

In the above case, cited by the appellees in their brief, the question involved was compressed by Mr. Justice Harlan, speaking for the Court, into the following statement:

> "What the Government particularly complains of—indeed, all that it complains of here—is the existence of a combination among the stockholders of competing railroad companies which, in violation of the Act of Commerce restrains

> interstate and international commerce through the agency of a common corporate trustee **designated to act for both companies repressing free competition between them.**"

And at page 354 the learned Justice, after stating that the actual nature of the transaction was only to organize the Northern Securities Company as a holding company in whose hands not as a real purchaser or absolute owner but simply as a custodian were to be placed the stocks of the company, such custodian to represent the combination for and between the stockholders of the constituent companies, said:

> "**The direct and necessary effect** of such combination being to restrain and monopolize interstate commerce by suppressing or smothering competition between the lines of two railway companies."

And the use of the term "necessary effect" was not meant, as we respectfully suggest and submit, to have a general application to all cases wherein interstate commerce was in any manner affected, but only applied and had special reference to the facts of that case where the Court found as intimated—a **plainly indicated intent** to restrain competition and thus to directly interfere with and restrain interstate commerce.

And to make this distinction more clear in its application to the present case, in the Northern Securities case, supra, the Court found that the plainly indicated intent and object of the conspiracy was to destroy competition and thus to interfere with interstate commerce, but here the theory of plaintiffs' case and the theory upon which they relied and upon which the case was tried was that the direct object and purpose of the defendants—as charged by the plaintiffs—was to unionize the plaintiffs' plants, and if this be so and even if there was interference, such interference with interstate commerce, not being the direct purpose of the conspiracy, was merely incidental, and did not give the federal court jurisdiction herein.

And in that case, too, Mr. Justice Harlan, after expressly approving the doctrine of the case of United States v. E. C. Knight Company, 156 U. S. 1, l. c. 331, and after stating that the Anti-Trust Act embraced and declared to be illegal every contract, combination or conspiracy which directly or necessarily operates in restraint of trade or commerce among the several states or with foreign nations distinctly held that the scope of the act should not be extended to manufacture or production in the following language:

> "It had no reference to the mere manufacture or production of articles or commodities within the limits of the several states."

UNITED STATES v. REDDING COMPANY, 226 U. S. 324.

The above case also cited by the appellees in their brief is not in point here, for there the question considered was not local sales of coal, but this Court held:

> "The general market contemplated was at tide-water and the sales were made upon the basis of the average price at tide-water,"

and that the purpose of the combination was to control and to dominate trade and commerce in other states for an illegal purpose, and in referring to the case of Interstate Commerce Commission v. Baird, 194 U. S. 25, l. c. 42, this Court said:

> "The conceded plan concerned the relations of these railroads to interstate commerce and **directly** affected the transportation, sale and price of the coal in other states." (See p. 364.)

Here plainly the direct object and purpose of the conspiracy found by the Court to exist was to obtain the complete control of the interstate traffic in the coal and this view is more particularly emphasized by the language that follows the foregoing declaration:

> "The prime object in engaging in this scheme was not so much **the control and sale of coal in**

Pennsylvania, but the control of sales in New York harbor.''

The object of the conspiracy in the Reading case, supra, was therefore, as found by the Court, to **directly** interfere with and unlawfully control the interstate commerce in coal, and the acts that followed it were plainly in furtherance and intimately connected with that purpose and design. The absorption of the stock of the collieries mentioned by the Temple Company, which the Court found to be a mere holding company, was declared to be part and the principal part of the common design.

The deduction made by the appellees from the opinion in the Reading case, supra, that the Sherman Act will reach any act, however remote such act (standing alone) may be from interstate commerce, if that act is made an effective part of a combination to restrict such commerce, cannot apply to the instant case, nor to any case which lacks actual proof of the existence of a conspiracy, the direct object of which is to unequivocally and unlawfully restrain interstate commerce, when, if that be proved, then every act done in pursuance of the conspiracy would constitute such an interference. But in the instant case, as we have already pointed out in the original brief and this brief, such a conspiracy for the direct object and purpose of unlawfully obstructing the

plaintiff's interstate commerce was neither pleaded nor proved, for the dispute was purely local, relating to terms and conditions of employment, and the effect on interstate commerce was not direct but incidental to the purpose of the alleged conspiracy.

AMERICAN COLUMN COMPANY v. UNITED STATES, 257 U. S. 377.

In the above case, also cited by the appellees in their brief, the bill not only alleged that the plan of the 400 members of the American Hardwood Manufacturers' Association constituted a combination and conspiracy to restrain interstate commerce in hardwood lumber by restricting competition and increasing prices, in violation of the Anti-Trust Act, but the Court found that the evidence established that the purpose and effect of the plan was to restrict competition and restrain interstate commerce. The theory upon which the above case was submitted to the Court is outlined by the Solicitor General on behalf of the Government in his brief, where, after citing the case of Hopkins v. United States, 171 U. S. 578, relied upon by the defendants and in which it was held that the Anti-Trust Act did not apply because interstate commerce was not directly involved, it was contended:

> "**These cases have no special bearing here,** because there is no question but that the appel-

lants' lumber was moving in interstate commerce.

"There is necessarily a distinction between agreements which by their nature **are local in their operation and but incidentally affect** interstate commerce, and those agreements which directly pertain to such commerce and are not local in their nature." (See page 300.)

DUPLEX PRINTING PRESS COMPANY v. DEERING, 254 U. S. 443.

Nor is the above case, cited by the appellees in their brief, in point here, for the jurisdiction of the federal court was not involved or questioned in that case, but invoked by reason of adverse citizenship and concerned the legality of what is known as the secondary boycott, but we find that one of the distinguished counsel who represented the appellants in the Duplex case, supra, contended for the point which we are trying to establish here by drawing a crisp and clear distinction between the mere local strike and a boycott by outsiders, as was the case in the Duplex case, supra. (See page 440.)

LAMAR v. UNITED STATES, 260 Fed. 561.

In the above case, also cited by the appellees in their brief, it was held that the intent of the conspirators was to foment a strike and stop manufacture

and transportation and that the object was not to call the strike but to restrain or suppress foreign trade, and emphasizing this view the Circuit Court of Appeals for the Second Circuit said:

> "Where it is proved (as here) that the proposed instigation of strikes bore no relation whatever to the welfare of the strikers, then at most and best the strike becomes nothing more than an instrument legal in itself, but used only for an illegal end."
>
> "The end or object of the proven conspiracy was not to call strikes, but **to restrain or rather to suppress foreign trade.**"

UNITED STATES v. WORKINGMEN'S COUNCIL, 54 Fed. 994.

This is the only citation from the federal reports in appellees' brief which appears to us to apply to the instant case, and there the basis of the finding of the Court was that:

> "Not only was the flow of commerce through the City of New Orleans purposely arrested, but even the transportation of the goods and merchandise from the permanent whereabouts to the landings was forcibly stopped."

But, as the facts show, [redacted] in this case, no such interference was made or offered.

OLIVER IRON COMPANY v. LORD,
262 U. S. 172, l. c. 178.

We find that the doctrine which we have been contending for was never more strongly emphasized than in the above case, where the suit was to restrain the enforcement of a taxing act adopted by the State of Minnesota, and this Court said (page 178):

> "Mining is not interstate commerce, **but like manufacturing** is a local business subject to local regulation and taxation."

Citing:

> Kidd v. Pearson, 128 U. S. 1, 20;
> United Mine Workers v. Coronado Coal Company, 259 U. S. 344.

And disposing of the precise jurisdictional point involved in the instant case, namely, that some of the articles to be manufactured were after that process was completed to be shipped in interstate commerce, this Court said:

> "Its character in this regard is intrinsic, is **not affected by the intended use or disposal of the product, is not controlled by contractual engagement** and persists, even though the business be conducted in close connection with interstate commerce."

CONCLUSION.

In conclusion we submit to the Court that the following are the admitted facts in this case:

(1) That the plaintiffs are Missouri corporations and the defendants are residents of the same state. There is no question, therefore, of diverse citizenship.

(2) That there was no interference whatever on the part of the defendants or other persons with the importation of raw material or the exportation of manufactured products from the factories of the plaintiffs.

(3) That the object and purpose of the conspiracy charged against the defendants in the complainants' bill was not to directly restrain or interfere with interstate commerce of the plaintiffs, but to unionize the plaintiffs' shops, and such interference was merely incidental to that purpose.

(4) That no direct purpose to interfere with the plaintiffs' interstate commerce could be reasonably implied from any acts of the defendants and no knowledge of the nature or the extent of such contracts was ever brought home to them.

(5) That all of the defendants with the exception of Birkenmeier were employes of the plaintiffs and all members of the local union in question; that their

contracts had expired; that they entered into negotiations for the renewal of these contracts with the plaintiffs under the plan of collective bargaining, and the failure to arrive at an understanding is not charged or proved to have been the fault of the defendants.

(6) That the conspiracy charged against the defendants, namely, to unionize the plaintiffs' plants, even if proved—which we deny—was a lawful one in which they were within their legal rights in entering into.

(7) That the defendants, on the failure of the negotiations above mentioned, peacefully withdrew from the plaintiffs' employment, and that as they had an undoubted right to do, and that this and this alone prevented the plaintiffs from manufacturing the raw material which remained in their hands.

We again submit that the learned majority opinion of the Court of Appeals in this case is clearly erroneous, and respectfully ask that the judgment be reversed.

Respectfully submitted,

JOHN P. LEAHY,
Solicitor and Counsel for Appellants.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66, ET AL. *v.* HERKERT & MEISEL TRUNK COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 233. Argued April 24, 25, 1924.—Decided June 9, 1924.

1. A strike by employees, intended to prevent through illegal picketing and intimidation of workers the continued manufacture of goods by their employer and having that effect, is not a conspiracy to restrain interstate commerce, within the Anti-Trust Act, even though the strikers know that the products when made are to be shipped in interstate commerce to fill orders already received and accepted from the employer's customers in other States; provided there be no actual or attempted interference with the free transport of the products, when manufactured, from the factory to their destination in other States, or with their sale in those States. *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344. P. 464.

2. The mere reduction of the supply of an article to be shipped in interstate commerce, by illegal and tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce; it is only when the intent or the necessary effect is to enable those preventing the manufacture to monopolize the supply, control prices, or discriminate as between would-be purchasers, that the unlawful interference can be said directly to burden interstate commerce. P. 471.

284 Fed. 446, reversed.

APPEAL from a decree of the Circuit Court of Appeals which affirmed a final decree of the District Court, granting an injunction in a suit by divers manufacturers of trunks and leather goods against striking employees and labor unions.

Mr. John P. Leahy for appellants.

Mr. Charles A. Houts and *Mr. Mat J. Holland*, with whom *Mr. Walter Gordon Merritt* was on the briefs, for appellees.

The formation of this conspiracy, and the acts done in pursuance thereof, were violative of the Anti-Trust Act, because a direct restraint was intended and placed upon the interstate business of the plaintiffs.

To accomplish this destruction the defendants had a choice of means available. They could have boycotted plaintiffs' goods in the hands of their customers. This would have been more difficult and less effective. Or they could have attempted to prevent the transfer companies from hauling plaintiffs' goods to the railroads for shipment. This they were probably not strong enough to do, and besides, such a course would have brought them into more certain conflict with the police. Or they could do, as they did do, assault and abuse those who desired to continue at work, and those who sought employment with plaintiffs, and thereby prevent plaintiffs' factories from operating. This latter was the easiest, safest and

most certain method of destroying plaintiffs' business. It was completely successful.

The evidence conclusively established the existence of the conspiracy to destroy plaintiffs' interstate business, and the unlawful means charged. Two courts have so found. See *Washington Securities Co.* v. *United States*, 234 U. S. 76.

Is a conspiracy to destroy an established interstate business, by preventing the manufacture of goods which are being sold and shipped in such interstate business, prohibited by the Sherman Act?

In *Eastern States Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600, this Court said: "It [the Sherman Act] broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce."

The purpose of § 1 of the act was to prevent any direct and unreasonable interference with interstate commerce. It condemns any plan, scheme or device, adopted as a part of a combination or conspiracy which has that effect. *Eastern States Lumber Assn.* v. *United States*, 234 U. S. 600; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Reading Co.*, 226 U. S. 324.

The deduction to be made from these cases is that the Sherman Act will reach any act, however remote (standing alone) it may be from interstate commerce, if it is made an effective part of a combination to restrict such commerce.

The pertinency of these cases is made to appear when the reasoning of the appellants in this case is kept in mind. Their reasoning may be roughly stated thus:

The Sherman Act deals only with interstate commerce. Manufacture is not interstate commerce. Therefore, the Sherman Act is not concerned with the stoppage of manufacture. With equal propriety might the defendants in the *Northern Securities Co. Case* have reasoned: The

Sherman Act deals only with interstate commerce. The purchase of shares of stock of interstate railroads is not commerce. Therefore, the Sherman Act has no concern with such purchase.

The comprehensiveness of the Sherman Act is no longer a question. It forbids any means by which a combination or a conspiracy may seek to restrict interstate commerce. If stoppage of manufacture is resorted to as such a means, the act prohibits it. *Pennsylvania Sugar Refg. Co.* v. *American Sugar Refg. Co.*, 166 Fed. 254; *American Column Co.* v. *United States*, 257 U. S. 377; *Loewe* v. *Lawlor*, 208 U. S. 274; *United States* v. *Workingmen's Council*, 54 Fed. 994; *United States* v. *Elliott*, 62 Fed. 801; *Thomas* v. *Railway*, 62 Fed. 803; *United States* v. *Debs*, 64 Fed. 724.

In *Loewe* v. *Lawlor*, 208 U. S. 274, the boycott was directed at the manufacturers' goods after transportation had ended and the hats had lost their status as a part of interstate commerce. They were boycotted as a means of destroying the interstate business of the manufacturers. The means employed operated at one end, after transportation ceased. In this case they operated at the other end, before transportation commenced. The purpose in each case was identical.

See *Duplex Co.* v. *Deering*, 254 U. S. 443; *Stafford* v. *Wallace*, 258 U. S. 495; *United States* v. *Ferger*, 250 U. S. 199; *Lamar* v. *United States*, 260 Fed. 561; s. c. 250 U. S. 673.

The conspiracy in *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, was between the union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it. As pointed out by Judge Sanborn, in the court below, the conspiracy alleged and proved in the present case is entirely different from that involved in the *Coronado Case*.

In *Hammer* v. *Dagenhart*, 247 U. S. 251, the restrictions placed on the manufacture of the goods had absolutely

no effect upon the goods themselves or upon the commerce into which they flowed, and the sole purpose of the act was to regulate the employment of children within the State.

In the present case the restraint imposed was not negligible; it was complete as to all commerce flowing from St. Louis in this particular line. It was not an indirect and incidental restraint on interstate commerce. The conspiracy charged was one to destroy this interstate business. The destruction of this business was the direct object of the conspiracy. Both the District Court and the Court of Appeals have so found. Such being its object, it cannot be said that the restraint was incidental. The stoppage of plaintiffs' interstate commerce by the means employed in this case was just as effectively a restraint upon interstate commerce, and just as violative of the Sherman Act, as would be the act of plaintiffs' competitors in Chicago, for instance, should they, for the purpose of destroying competition, purchase the stock of the plaintiff companies and by their control, thus secured, stop the manufacture of all goods in plaintiffs' factories.

Mr. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This suit was begun by a bill in equity filed in the District Court for the Eastern District of Missouri by the Herkert & Meisel Trunk Company and four others, all corporations of Missouri, engaged in making trunks and leather goods in St. Louis, against the United Leather Workers Union, Local Lodge or Union No. 66, an unincorporated association, its officers and agents and a number of its members. The bill averred that each of the complainants had built up a valuable business in making, selling and shipping in interstate commerce trunks and leather goods, that each received large quantities of raw material by interstate commerce, and employed a large

number of persons, men and girls, that on February 28, 1920, defendants demanded that their shops be unionized and conducted as closed shops and announced that if complainants refused they would ruin the interstate commerce business of each of them, that on April 10, 1920, the defendants, acting individually and on behalf of the defendant union, in order to destroy the complainants' business and to prevent their employees from continuing in their employment unless complainants would yield to their demands, began a strike, assaulted and threatened complainants' employees, and intimidated them so as to force them against their wills to quit complainants' employment, and that they thereby prevented complainants from engaging in and carrying on their interstate business and interfered with and obstructed them in the manufacture and shipment of the products of their factories sold to be shipped in interstate commerce. The bill charged that defendants were carrying out their illegal conspiracy and purposes by mass picketing and intimidation, that the interference with complainants' interstate commerce was intentional and malicious and was intended to destroy it, that it was in violation of the Anti-Trust Law and the Clayton Act, and that they had already inflicted, and unless restrained would continue to inflict, irreparable injury upon such business. The bill shows that each complainant's damage threatened exceeded three thousand dollars. The prayer was for a temporary and then a final injunction to prevent the intimidation, illegal picketing and other interference with complainants' manufacturing and interstate business and with their employees or would-be employees engaged in carrying it on. Certain of the defendants answered the bill and denied the picketing, intimidation, and violence and the purpose to interfere with complainants' interstate business as charged, and averred that they and the fellow members of the Union had lawfully quit the employment of complainants

because they could not agree upon the terms of a new agreement. The District Court upon preliminary hearing granted a temporary injunction and upon final hearing granted a final decree enjoining defendants as prayed. The case was taken on appeal to the Circuit Court of Appeals where the decree of the District Court was affirmed, one Judge dissenting. 284 Fed. 446. The cause now comes before us on appeal under § 241, Judicial Code.

The evidence adduced before the District Court showed that the defendant, the Local Union No. 66 of the United Leather Workers, having declared a strike against the complainants and withdrawn its members from their employ, instituted an illegal picketing campaign of intimidation against their employees who were willing to remain and against others willing to take the places of the striking employees, that the effect of this campaign was to prevent the complainants from continuing to manufacture their goods needed to fill the orders they had received from regular customers and would-be purchasers in other States, that such orders covered ninety per cent. of all goods manufactured by complainants, that the character of their business was known to the defendants, and that the illegal strike campaign of defendants thus interfered with and obstructed complainants' interstate commerce business to their great loss. There was no evidence whatever to show that complainants were obstructed by the strike or the strikers in shipping to other States the products they had ready to ship or in their receipt of materials from other States needed to make their goods. While the bill averred that defendants had instituted a boycott against complainants and were prosecuting the same by illegal methods, there was no evidence whatever that any attempt was made to boycott the sale of the complainants' products in other States or anywhere or to interfere with their interstate shipments of goods ready to ship.

The sole question here is whether a strike against manufacturers by their employees, intended by the strikers to prevent, through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate commerce under the Anti-Trust Act because such products when made were, to the knowledge of the strikers, to be shipped in interstate commerce to fill orders given and accepted by would-be purchasers in other States, in the absence of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products when manufactured from the factories to their destination in other States, or with their sale in those States.

We think that this question has already been answered in the negative by this Court. In *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, a coal mining company in Arkansas changed its arrangement with its employees from a closed shop to an open shop. The local union resented the change and the avowed purpose of the company to protect non-union employees by armed guards. Violence, murder and arson were resorted to by the union. Seventy-five per cent. of the output of the mine was to be shipped out of the State and a car of coal prepared for interstate shipment was destroyed by the mob of strikers and their sympathizers. It was contended that, as the result of the conspiracy was to reduce the interstate shipment of coal from the mines by 5,000 tons or more a week, this conspiracy was directed against interstate commerce, and triple damages for the injury inflicted could be recovered under the Federal Anti-Trust Law. But this Court held otherwise and reversed a judgment for a large amount on the ground that the evidence did not disclose a conspiracy against interstate commerce, justifying recovery under the law. The language of the Court was (p. 407):

"Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In *Hammer* v. *Dagenhart*, 247 U. S. 251, 272, we said: 'The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S. 439.' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce." The same rule was followed in *Gable* v. *Vonnegut Machinery Co.*, 274 Fed. 66, 73, 74.

The same general principles are affirmed in *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 259; *Crescent Oil Co.* v. *Mississippi*, 257 U. S. 129, 136; *Arkadelphia Milling Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S. 134, 151; *McCluskey* v. *Marysville Ry. Co.*, 243 U. S. 36, 38; *Diamond Glue Co.* v. *U. S. Glue Co.*, 187 U. S. 611, 616; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238, 245; *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12, 13; *Kidd* v. *Pearson*, 128 U. S. 1, 20, 21; *Coe* v. *Errol*, 116 U. S. 517, 528.

The Circuit Court of Appeals seems first to have based its conclusion on cases like *Rearick* v. *Pennsylvania*, 203 U. S. 507; *Caldwell* v. *North Carolina*, 187 U. S. 622; *Brennan* v. *Titusville*, 153 U. S. 289; and *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 497. These dealt directly with the sale of goods in interstate commerce. They were cases of state taxation upon the solicitation and acceptance of orders of goods to be sent from one State to another. The subject matter taxed was contracts of sale proposed or made for deliveries of goods in interstate commerce. It is a far cry from such cases to a strike to induce the employers to make better terms with their employees when no interference with the transportation or

future sale of the goods by the strikers is attempted or shown.

The Circuit Court of Appeals found further justification for its conclusion in cases like *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277, *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, and *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50. They present the practical conception of interstate commerce elaborated in *Swift & Co.* v. *United States*, 196 U. S. 375, hereafter to be discussed, as a flowing stream created by a course of business to be protected against State invasion, but it must be a real and direct invasion and not something incidental or remote. Thus in the *Pipe Line Company* and *Gas Company Cases*, the State of West Virginia sought to tax a stream of oil and gas flowing constantly through the State and out of it. It was held that the mere power of those who directed the stream to divert it from interstate commerce when as a course of business it was constantly interstate with only incidental and minor diversions to intrastate commerce, did not expose to the taxing power of the State that part of the flow which crossed state lines. The burden and invasion of interstate commerce was direct. In the *Bondurant Case*, a Tennessee Milling Company bought a crop of grain in Kentucky, to be delivered on board the cars in Kentucky for shipment to Tennessee in accord with a course of business between the parties. It was held that an effort by the State of Kentucky to require a license of the Tennessee Company before it could buy and ship grain from Kentucky to Tennessee was a burden on, and invasion of, interstate commerce even though the Milling Company might have stopped the grain in Kentucky contrary to the usual course.

In *Lemke* v. *Farmers Grain Co.*, a state law of North Dakota subjected the purchase price of all grain flowing in a regular course of business from that State to the

market in Minneapolis, Minnesota, to a North Dakota inspector who was required to fix the price and determine thereby the profit the buyer should make after paying the freight to Minneapolis at the market price in that city. This was held to be a direct burden and restraint upon the interstate commerce in the grain from one State to the other. It was a direct limitation on that commerce.

None of these cases, although they all illustrate the practical conception of interstate commerce as a flowing stream from one State to another formed by a regular course of business, can properly be said to support the argument that mere intentional cutting down of manufacture or production is a direct restraint of commerce in the product intended to be shipped when ready, or to be any departure from the general rule last announced in the *Coronado Case* and uniformly applied in all the cases referred to above, which it followed. The effect upon interstate commerce in the four cases just cited on the other hand was directly burdensome and restraining.

Then the Circuit Court of Appeals found sustaining precedent in *Swift & Co.* v. *United States,* 196 U. S. 375. In that case the defendants were charged with a conspiracy to monopolize interstate commerce in cattle, step by step from the purchase of them on the western plains, in the transportation of them by the railroads through to the stockyards at Chicago, their sale and distribution there, their slaughter and preparation as meats in the packing houses of that city and their distribution and sale in the East. This Court held that such a conspiracy was a violation of the Federal Anti-Trust Law because it was an intended obstruction to the flow of interstate commerce which Congress in the Anti-Trust Law intended to keep free and untrammeled. It held that the intent to monopolize and restrain the stream of interstate commerce

and the probability that by such methods and steps as were attempted the purpose of the conspiracy could be effected, brought the whole machinery of the conspiracy within the federal jurisdiction. The case rested wholly on the probably effective intent of the conspirators directed against interstate commerce.

The case of the *Addyston Pipe Co.* v. *United States*, 175 U. S. 211, was an agreement between those who made and sold iron pipe in different States to fix prices as between themselves and not sell and deliver pipe from their foundries across state lines in competition with each other. Their intent and ability to control prices and prevent the public from having the benefit of competition in interstate trade brought them within the Federal Anti-Trust Act.

So in the case of *Montague & Co.* v. *Lowry*, 193 U. S. 38, manufacturers in eastern States of tiles and grates agreed with manufacturers and dealers in California not to sell tiles and grates to local dealers who would not agree to keep up prices. The intent to control commerce between the eastern States and local dealers in California, and thus to maintain prices, was held to constitute a conspiracy in restraint of interstate commerce.

On the other hand, *Hopkins* v. *United States*, 171 U. S. 578, *Anderson* v. *United States*, 171 U. S. 604, and *United States* v. *E. C. Knight Co.*, 156 U. S. 1, were held not to come within the Federal Anti-Trust Law because the facts of those cases were not thought to reveal the probably effective intent directly to compass the restraint on interstate commerce.

The *Knight Case* has been looked upon by many as qualified by subsequent decisions of this Court. The case is to be sustained only by the view that there was no proof of steps to be taken with intent to monopolize or restrain interstate commerce in sugar, but only proof of the acquisition of stock in sugar manufacturing companies to

control its making. As intimated in the *Swift Case* (196 U. S. 397), the *Knight Case* was very near the line. See also the distinction pointed out by the Circuit Court of Appeals in *Pennsylvania Sugar Refg. Co.* v. *American Sugar Refg. Co.*, 166 Fed. 254, 256, between that case and the *Knight Case*. The *Knight Case* emphasizes the difference between manufacture and interstate commerce. But the *Knight Case* was a far stronger case for federal jurisdiction under the Anti-Trust Law, because of the probable relation between the monopoly of manufacture and sale in interstate commerce, than the case at bar, in which there is present no element of intended and probable monopoly or discrimination in interstate commerce. The same element was lacking in the *Coronado Case*.

In *Loewe* v. *Lawlor*, 208 U. S. 274, and in *Duplex Co.* v. *Deering*, 254 U. S. 443, members of labor unions having a controversy with their employers sought to embarrass the sales by their employers of the product of their manufacture in other States by boycott and otherwise. They were held guilty of a conspiracy against interstate commerce because of their palpable intent to achieve their purpose by direct obstruction of that commerce.

The cases of *Stafford* v. *Wallace*, 258 U. S. 495, and *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, are also supposed in some way to sustain the view that a strike against the manufacture of commodities intended to be shipped in interstate commerce is a conspiracy against that commerce. What those cases decided was that when Congress found from investigation that more or less constant abusive practices and a course of business, usually only within state police cognizance, threatened to obstruct or unduly to burden the freedom of interstate commerce, it could by law institute supervision of such course of business in order to prevent the abuses having such effect. As said in *Stafford* v. *Wallace* (p. 520):

"The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint."

In *United States* v. *Patten*, 226 U. S. 525, 543, running a corner in the available supply of a staple commodity, normally the subject of interstate commerce, in order to enhance its price artificially in the whole country, although the corner was carried on only in New York by sale of cotton futures, was held to be a monopoly of interstate commerce in violation of the Federal Anti-Trust Act. It was the intent to monopolize such commerce and its probability of success which sustained the indictment.

In the *Coronado Case, supra*, (p. 410), this Court referred to the *Patten Case* and the difference between that and the *Coronado Case* as follows:

"The difference between the *Patten Case* and that of *Ware & Leland* v. *Mobile County*, 209 U. S. 405, illustrates a distinction to be drawn in cases which do not involve interstate commerce intrinsically but which may or may not be regarded as affecting interstate commerce so directly as to be within the federal regulatory power. In the *Ware & Leland Case*, the question was whether a State could tax the business of a broker dealing in contracts for the future delivery of cotton where there was no obligation to ship from one State to another. The tax was sustained and dealing in cotton futures was held not to be interstate commerce, and yet thereafter such dealings in cotton futures as were alleged in the *Patten Case* where they were part of a conspiracy to bring the entire cotton trade within its influence, were held to be in restraint of

interstate commerce. And so in the case at bar, coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred."

This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce.

The record is entirely without evidence or circumstances to show that the defendants in their conspiracy to deprive the complainants of their workers were thus directing their scheme against interstate commerce. It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainants to yield to demands in respect to the terms of employment; but they did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product.

We concur with the dissenting Judge in the Circuit Court of Appeals when, in speaking of the conclusion of the majority, he said: "The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce." (284 Fed. 446, 464.)

We can not think that Congress intended any such result in the enactment of the Anti-Trust Act or that the decisions of this Court warrant such construction.

Decree reversed.

MR. JUSTICE MCKENNA, MR. JUSTICE VAN DEVANTER, and MR. JUSTICE BUTLER, dissent.

UNITED STATES v. TITLE INSURANCE & TRUST